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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

विदेश मंत्रालय

(सी.पी.वी. प्रभाग)

नई दिल्ली, 15 जनवरी, 2020

का.आ. 111.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद् द्वारा, केंद्र सरकार भारत के प्रतिनिधि कार्यालय, अल्माटी में निम्नलिखित कर्मचारियों को दिनांक 16 जनवरी 2020 से सहायक कोंसुलर अधिकारी के तौर पर कोंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

(1) श्री रिन्कू जी पण्डित, सहायक अनुभाग अधिकारी

[फा. सं. टी-4330/01/2020]

टी. अजुंगला जामिर, निदेशक (सी.पी.वी.)

MINISTRY OF EXTERNAL AFFAIRS

(CPV DIVISION)

New Delhi, the 15th January, 2020

S. O. 111.—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby authorizes the following officials in Representative Office of India, Almaty to perform the consular services as Assistant Consular Officers with effect from 16 January, 2020.

(i) Shri Rinkoo Ji Pandit, ASO

[F. No. T-4330/01/2020]

T. AJUNGLA JAMIR, Director (CPV)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 24 जनवरी, 2020

का.आ. 112.—केन्द्र सरकार, एतद द्वारा, दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 की अधिनियम संख्या 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए तमिलनाडू राज्य सरकार, दिनांक 10.07.2019 के जी.ओ. (आरटी.) सं. 386 के माध्यम से जारी शुद्धि पत्र के साथ पठित दिनांक 22.02.2019 के जी. ओ. (2डी) सं. 61 के माध्यम से जारी अधिसूचना के जरिए प्राप्त सहमति से विदेश अंशदान (विनियमन) अधिनियम, 2010 (वर्ष 2010 के केंद्रीय अधिनियम सं. 42) के तहत दर्ज संदर्भ सं. फा.सं. II/21022/58(396)/206-एफसीआरए (एमयू), दिनांक 18.05.2017 (केंद्रीय अन्वेषण ब्यूरो संदर्भ सं. 20-01/सीए-24/2017/ईओयू-VII, दिनांक 21.06.2017) में निदेशक (एफ.सी. एवं एम.यू.), विदेशी व्यक्ति विभाग (एफ.सी.आर.ए. विंग), गृह मंत्रालय द्वारा दिए गए संदर्भ से उत्पन्न अपराधों में अन्वेषण करने के लिए तथा इससे संबद्ध अथवा उपरोक्त अपराध(धों) से संबंधित अपराधों एवं/अथवा उससे सम्बद्ध अपराधों में किए गए प्रयासों, दुष्प्रेरणाओं और षड्यंत्रों तथा अन्य अधिनियम के अधीन उसी संव्यवहार के दौरान किए गए या उक्त अपराधों को अंजाम देने से संबंधित समान कृत्यों और तथ्यों से उत्पन्न किसी भी किसी अन्य अपराध या अपराधों, जिनमें करूणा बाल विकास (सी.बी.व्ही.), तमिलनाडू और अधाने मैनेज़मेंट कंसल्टैंट्स प्राईवेट लिमिटेड (ए.एम.सी.पी.एल.), तमिलनाडू और अन्य संलिप्त हैं, के द्वारा किए गए अभिकथित अपराधों की जांच करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त तमिलनाडू राज्य में करती है।

[फा. सं. 228/39/2019-एवीडी-II]

पी. के. जायसवाल, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(DEPARTMENT OF PERSONNEL AND TRAINING)

New Delhi, the 24th January, 2020

S.O. 112.—In exercise of the powers conferred by Sub Section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Tamil Nadu, issued vide Notification G.O. (2D) No. 61, dated 22.02.2019 r/w its corrigendum issued vide No. G.O. (Rt.) No. 386 dated 10.07.2019, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to whole State of Tamil Nadu for the investigation into the offences arising out of reference made by Director (FC & MU), Foreigners Division (FCRA Wing), Ministry of Home Affairs in F.No. II/21022/58(396)/206-FCRA (MU) dated 18.05.2017 (Central Bureau of Investigation reference No. 20-01/CA-24/2017/EOU-VII, dated 21.06.2017) under the Foreign Contribution Regulation Act, 2010 (Act No. 42 of 2010) and any attempt, abetment and conspiracy in relation to or in connection with such offence(s) and/or any other offence committed under any other Act in the course of

the same transaction or arising out of the same facts alleged to have been committed by Caruna Bal Vikas (CBV), Tamil Nadu and Adhane Management Consultants Pvt. Ltd. (AMCPL), Tamil Nadu and others involved therein.

[F. No. 228/39/2019-AVD-II]

P. K. JAISWAL, Under Secy.

आयुष मंत्रालय

नई दिल्ली, 3 जनवरी, 2020

का.आ. 113.—केंद्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम 1976 (यथा संशोधित 1987) के नियम 10 के उप-नियम (4) के अनुसरण में, आयुष मंत्रालय के प्रशासनिक नियंत्रणाधीन निम्नलिखित कार्यालयों, जिनके शत प्रतिशत कर्मचारीवृन्द ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को एतदद्वारा अधिसूचित करती हैं:-

"होम्योपैथिक औषधि अनुसंधान संस्थान, लखनऊ, उत्तर प्रदेश"

"मस्तिष्क ज्वर चिकित्सकीय होम्योपैथिक अनुसंधान इकाई, गोरखपुर, उत्तर प्रदेश"

[फा. सं. ई-11018/1/2018-आयुष (रा.भा.)]

पी. एन. रण्जीत कुमार, संयुक्त सचिव

MINISTRY OF AYUSH

New Delhi, the 3rd January, 2020

S.O. 113.—In pursuance of Sub-Rule (4) of Rule 10 of the Official Language (Use for official purposes of the Union) Rules. 1976 (as amended in 1987), the Central Government hereby notifies the following offices under the administrative control of the Ministry of AYUSH, wherein cent percent officials have acquired the working knowledge of Hindi:

''Homoeopathic Drug Research Institute, Lucknow, Uttar Pradesh"

"Clinical Trial Unit of Homoeopathy for Viral Encephalitis, Gorakhpur, Uttar Pradesh"

[F. No. E-11018/1/2018-AYUSH (O.L.)]

P. N. RANJIT KUMAR, Jt. Secy.

नागर विमानन मंत्रालय

(एएआई अनुभाग)

नई दिल्ली, 23 जनवरी, 2020

का.आ. 114.—मंत्रिमंडल की नियुक्ति समिति के दिनांक 23 अक्तूबर, 2019 के आदेश संख्या 36/02/2019-ईओ(एसएम-I) के अनुसरण में केन्द्र सरकार, एतदद्वारा श्री अरविन्द सिंह, भा.प्र.से.(एमएच-1988) को दिनांक 6 नवम्बर, 2019 के पूर्वाहन से उनकी अधिवर्षिता की तिथि यथा 31 मार्च, मई 2023 तक अथवा आगामी आदेशों, इनमें से जो भी पहले हो, वेतन मैट्रिक्स (संशोधित) के स्तर 15 में भारतीय विमानपत्तन प्राधिकरण के अध्यक्ष के पद पर नियुक्त करती है। कार्मिक और प्रशिक्षण विभाग के दिनांक 15.01.2015 के कार्यालय ज्ञापन संख्या 26/04/2011-ईओ(एसएम-I)(भाग II) के अनुसार अधिकारी की नियुक्ति को भारत सरकार में अपर सचिव के पद पर की गई नियुक्ति के समकक्ष माना जाएगा। सभी पात्रताएं भी अपर सचिव के पद के अनुसार ही रहेंगी।

[फा. सं. एवी-24011/5/2018-एएआई-एमओसीए]

नरेन्द्र सिंह, अवर सचिव

MINISTRY OF CIVIL AVIATION

(AAI SECTION)

New Delhi, the 23rd January, 2020

S.O. 114.—In pursuance of Appointments Committee of the Cabinet Order No. 36/02/2019-EO(SM-I) dated 23rd October, 2020, the Central Government hereby appoint Shri Arvind Singh, IAS (MH:1988) as Chairman, Airports Authority of India, with effect from forenoon of 06th November, 2019 in the Level 15 of the Pay Matrix (revised) till 31st May, 2023, i.e. the date of his superannuation or until further orders, whichever is the earlier. The officer's appointment shall be treated as an officer appointed to the post of Additional Secretary in the Government of India as per Department of Personnel & Training OM No. 26/04/2011-EO(SM-I)(Pt.II) dated 15.01.2015. All entitlements shall also be as per the post of Additional Secretary.

[F.No. AV-24011/5/2018-AAI-MOCA]

NARENDRA SINGH, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 24 जनवरी, 2020

का.आ. 115.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पारादीप पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ सं. 81/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 24.01.2020 को प्राप्त हुआ था।

[सं. एल-39025/01/2020-आईआर (बी-II]

सीमा बंसल, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 24th January, 2020

S.O. 115.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 81/2017) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court,* Bhubaneshwar as shown in the Annexure, in the industrial dispute between the management of Paradeep Port Trust, and their workmen, received by the Central Government on 24.01.2020.

[No. L-39025/01/2020-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Industrial Dispute Case No. 81 OF 2017

Dated Bhubaneswar, the 14th November, 2019

Present:

Shri B.C.Rath, LL.B.,
Presiding Officer,
C.G.I.T-cum-Labour Court,
Bhubaneswar

Between:

(1) The Dy. Conservator, Paradeep Port Trust,
1st Floor Extension of Administrative Building,
At/P.O. Paradeep Port, Dist: Jagatsinghpur.

(2) The Chairman , Paradeep Port Trust,
Administrative Building, At/P.O. Paradeep Port,
Dist: Jagatsinghpur. …First party management

And

Their workman, Smt.Nirupama Rout,
Qrs. No. NA-124, Nuabazar, P.O. Paradeep
Port, Dist: Jagatsinghpur. 754 142. …Second party workman

Appearances:-

Capt. P. K. Nayak, Pilot. .. For first party management

Smt.Nirupama Rout. .. Second party workman herself

AWARD

This Award is directed against an application preferred by workman Smt. Nirupama Rout resorting to the provisions of Section 2(A) sub-section (2) and sub-section (3) of the Industrial Disputes Act, 1947 (herein after referred to as the Act) wherein and whereby the workman has raised the present dispute in regard to termination of her service by the management.

2. The case of the workman as emerging from her statement of claim, in brief, is that she was given appointment with effect from 30.5.96 as Stenographer Grade III by the Deputy Conservator, Paradeep Port Trust (the management No.1) against the vacant post of Stenographer Gr.III caused due to transfer of Stenographer Sri K.K.Parida to other department. She had under gone the test of Stenography and being found suitable, she was given appointment as Stenographer Gr.III. At the time of her initial appointment, the monthly salary of a Stenographer Gr.III was Rs.3458/- including D.A, house rent and special allowance. Keeping in view the above salary, she was issued with appointment letter for 44 days on a daily wage of Rs.115/-. Her initial appointment was for one year, but she continued in the post even completion of one year. According to the workman, her wage was revised from time to time on her application and she worked as Stenographer Gr.III from 1996 to 2002. She approached the management for regularization of her service in 2002. When her representation was not considered, she preferred a writ before the Hon'ble High Court of Odisha vide O.J.C. No.4856 of 2002. It is her claim that the Hon'ble High Court was pleased to protect her service by an interim order while entertaining the application for regularization of her service. The said writ was disposed of on 23.08.2017 being treated as withdrawn with a liberty to the workman to approach the appropriate forum for alternative relief. The management terminated her service on 29.08.2017 in the event of the disposal of the writ instead of taking any step for regularization of her service. It has been pleaded by her that she continued as Stenographer Gr.III in the office of the management from 1996 to 2017 for a period of about 22 years and she worked for 240 days continuously and uninterruptedly in each calendar year preceding to her termination. Despite of such continuous service of 240 days in each calendar year for about 22 years, she was neither given any prior notice nor notice pay and retrenchment compensation. She was working directly under the control and supervision of the management. Her wages was paid directly by the management. Her engagement was never done through any contractor or out-sourcing agencies. When her service was terminated without complying the provisions of Section 25-F of the Act, she raised an industrial dispute before the labour machinery for her reinstatement in service with full back wages and regularization of her service as she was given appointment after she being successful in a skill test held on 10.5.1996. As the conciliation proceeding was failed she was issued with a certificate for raising a dispute directly in the appropriate forum. Hence the present case.

3. The management had resisted the claim statement refuting the allegation in toto and it has taken a stand that the workman was given appointment for one year temporarily in a spell of 44 days with one day break on a remuneration of Rs.115/- per day. Her engagement was a conditional one and it can be terminated at any time without any further notice to her. She had not undergone any skill test or recruitment test before appointment as claimed by her. After completion of one year, she was engaged as D.L.R. Stenographer through a contractor. She was re-engaged as Steno-Typist on contract basis for a period of 44 days with effect from 1.12.2001. It has been pleaded by the management that in 2002 when the action was taken for recruitment of regular Stenographer in Grade III, the workman was given a chance to compete along with other candidates. She was issued with a letter on 11.2.2002 for attending the recruitment test. But she failed to come out successful in typing test held on 17.3.2002. Hence she filed a writ petition before the Hon'ble High Court vide O.J.C. No. 4896 of 2002 challenging the selection process for recruitment of Stenographer Gr.III with a prayer to regularize her service from the date of her temporary initial appointment in the year 1996. A Misc. case was registered in which the Hon'ble Court passed an order "service of the petitioner may not be terminated without leave of this Court". It is claim of the management that on disposal of the said writ the interim relief granted by the Hon'ble

Court was vacated.. Hence termination letter was issued to the workman on 23.08.2017. As her appointment was purely on temporary basis for a spell of 44 days with a breakage of one day and she continued in the employment due to stay granted by the Hon'ble Court, she was not entitled to notice pay and retrenchment compensation. Hence no irregularity has been committed by the management in terminating the service of the workman without prior notice or notice pay and retrenchment compensation. That apart, her appointment was through a contractor for a specific period and the management has no role to play in her termination. Hence the management has prayed for rejection of the statement of claim of the workman.

4. On the aforesaid pleadings of both the parties, the following issues have been settled for just and proper adjudication of the dispute.

ISSUES

(i) Whether the application preferred under Section 2-A(2) is maintainable in the eye of law ?

(ii) Whether the termination of service of the applicant with effect from 23.08.201 by the management is legal and or justified ?

(iii) If not, to what relief the workman is entitled ?

5. In support her claim, the applicant/workman has examined herself as W.W.1 and filed documents like, copy of the note sheets, copy of engagement order dated 29/30.5.1996, copy of employment circular, copy of educational qualification certificate, copy of the Bank Account, copy of the application, copy of the office order, copy of the note sheet, copy of the orders of the Hon'ble High Court, copy of the handicapped certificate, copy of the good performance certificate, copy of the termination order, copy of the over time sanction order, copy of the quarter allotment order, copy of the order of the Hon'ble High Court in O.J.C. No. 4896 of 2002, copy of termination order dated 23.08.2017,copy of application for re-engagement, copy of the appeal made before the Regional Labour Commissioner (Central), copy of the order of Assistant Labour Commissioner (central), copy of the conciliation proceeding, copy of certificate of Conciliation Officer under Section 2-A(2) of the Act, copy of the appeal of the workman, copy of award dated 20.3.2003 passed in I.D. case No.112/2001, copy of the office order of the management, copy of the office order regarding payment of arrears to 39 workers and copy of free gate pass issued to the workman marked as Ext. 1 to Ext.27 respectively. On the other hand, the management has examined one of its officer namely Prasant Kumar Nayak as M.W1 and relied upon the documents like, copy of office order dated 30.05.1996,copy of joining report of the workman on 30.5.1996, copy of order of the Hon'ble High Court passed in Misc.case No. 5077/2002, copy of bio-date of the workman, copy of order of the Hon'ble High Court dated 24.7.2015, copy of office order dated 10.9.2015, copy of office order dated 11.9.2015, copy of order of the Hon'ble High Court dated 23.8.2017, copy of office order dated 30.5.1996 and copy of office note sheet, which are marked as Ext. A to Ext. K respectively to refute the claim of the workman.

6 As all the issues are interconnected to each other, they are taken into consideration simultaneously for the sake of convenience.

7. It is the contention of the management that a contract employee more particularly an employee appointed on casual basis has no right what-so ever to claim for regularization and such a claim can not be entertained in the Tribunal resorting to the provisions of Section 2-A of sub-clause (2) and (3) of the Act. As such, the case is not maintainable in the eye of law. It has relied upon the decision of the Hon'ble Apex Court in the case between the Secretary, State of Karnatak and Uma Devi reported in 2006(4) SCC 1 to strengthen its contention. Undisputedly it is well settled in a catena of decisions including the case as referred to above that the person not appointed or engaged through a proper recruitment process for regular appointment has no right to claim for regularization as the same could violate Articles of 14 and 16 of the Constitution by which other eligible candidates being deprived of having an opportunity to such appointment. But, on a close scrutiny of the pleadings and the evidence adduced by the workman it is found that the workman has not only raised a dispute for regularization of her service, but also a dispute for her termination from service alleging that necessary compliance of Section 25-F of the Act was not made when her appointment was terminated. There is no serious dispute that her initial appointment for temporary period was made by the management. Her subsequent appointment either made directly or through contractor was under the control and supervision of the management No.1. Such appointment was made with the approval of the management No.2. Evidence as led by the parties is overwhelming to show that the applicant-workman was given her initial appointment directly by the management No.1 (Ext.1), her wages was paid by the management directly and her letter of termination was also issued by the management No.1. It is in the evidence that she was also working under direct control and supervision of the management. That being the position, the relationship of employer and employee exists between the parties. The workman seems to have approached the labour machinery after her termination and conciliation having been failed between the parties, she was issued with a certificate/letter with regard to such

failure of conciliation. That apart, the workman has filed her statement of claim directly before this Tribunal within three years from the date of her alleged termination of service. So, in the above back grounds pleading and the argument advanced by the management in regard to non-maintainability of the case/claim statement has no merit.

8. Coming to the issue "whether the termination of the workman from service with effect from 23.8.2017 was legal and or justified" , it is seen from the pleading and the evidence of the workman that she was given appointment for a temporary period of one year for an initiation spell of 44 days and it was renewed with one day break. She has claimed further that she had gone through skill test, i.e., stenography test and she became successful in the said test. Since her appointment was against a vacant post, she could have been regularized permanently in the post on account of she being qualified and eligible for the post. But there is no credible evidence except the oral testimony of the workman that she had undergone a skill test before her initial temporary appointment. Not a single scrap of paper or document is filed to establish that any recruitment process was initiated to fill-up the post of Stenographer Gr.III in the year 1996 and the workman being a candidate for such post was called to take a skill test and she came out successful in such test conducted by the management. As per the settled principles the initial burden lies on the workman to establish or to show that her appointment was in due process of recruitment. The evidence of the workman is wanting in this regard and in absence of any credible evidence, I am not inclined to accept that the workman was given appointment after she being successful in a test conducted in a recruitment process.

9. However, taking the pleadings and evidence of both the parties into consideration, it can be safely said that her initial appointment as a Steno-Typist for a period of one year with a renewal of spell of 44 days of appointment with one day break is an admitted fact. That apart, her initial appointment in the year 1996 finds support from the appointment letter exhibited by the parties which is marked as Ext.1. As per Ext.1, the period of contract engagement was for 44 days from the date of her joining and as per terms and conditions of said appointment letter, her contract job could be terminated at any time without any notice and financial implication. Keeping in view the said terms and conditions of the appointment it is contended on behalf of the management that no notice pay in lieu of notice and retrenchment compensation is required to be paid at the time of termination/retrenchment of the workman. Admittedly the workman continued in the job after completion of the spell of 44 days. The management has neither pleaded nor adduced any rebuttal evidence to show that the renewal of appointment of the workman after 44 days was with same terms and conditions as shown in Ext.1. On the other hand, it is emerging from the pleadings and the evidence of the parties that after one year from her initial appointment as Steno-Typist, she continued in the job. Though, the management claims that the workman was engaged by the contractor and her service was placed before the management for doing the job of Steno-Typist after one year, there is no credible evidence or document to establish that the workman was employed for the job of Steno-Typist through any contractor. On the other hand, it is the admitted in the evidence of M.W.1 that the workman was paid directly by the management and she was working under the supervision and control of the management No.1. There is also no specific evidence of the management that the temporary appointment of the workman on daily wage basis was renewed from time to time in every 44 days with one day break and her service was renewed after each spell of 44 days with the breakage. The management could be expected to produce such order in its evidence. On the other hand, it is not seriously disputed and it is emerging from the pleadings and evidence of the parties that the workman continued her employment till the year 2002 and when she filed a writ before the Hon'ble High Court for regularization her service. Her daily wage was revised from time to time. She was getting the benefits of medical service, quarter and bonus. She claimed to have worked for more than 240 days continuously and un-interruptedly in each calendar year for all those period i.e., till 2002 when she preferred a writ before the Hon'ble High Court.

10. The onus of burden to prove the continuous and uninterrupted service for a period of 240 days in a calendar year preceding to the termination of the workman seems to have been duly discharged by the applicant-workman. No notice pay in lieu of notice and retrenchment compensation was offered to the workman before her service was protected by the judicial order of the Hon'ble High Court in a writ preferred by the workman. Hence a duty is cast upon the management to show that it was decided to dispense with the service of the workman and she was duly intimated in regard to her proposed retrenchment just before the protection given by the Hon'ble High Court in a judicial order. The management has no evidence to show that her employment was not continuous and uninterrupted for 240 days in any calendar year preceding to her termination or preceding to the date of which her service was protected by a judicial order.

11. The only facts and circumstances available in favour of the management is that the engagement of the workman from the year 2002 onwards won by a judicial order passed by the Hon'ble High Court. Since the workman was allowed to continue in service from 2002 to 2017 by the strength of an order by the Hon'ble High Court, the workman may not be entitled to get retrenchment compensation for those period. But, her right to

such retrenchment compensation can not be denied for the period from 1996 to 2002 when she preferred a writ before the Hon'ble High Court. That apart no prior notice or notice pay in lieu of notice was issued to her for termination when she approached the Hon'Ble High Court for regularization of her service. Hence, taking the above facts and circumstances into consideration, it can safely be held that the provisions of Section 25-F of the Act was not complied with when the service of the workman was dispensed with. As per the provisions of law, as well as settled principles, the management should have complied the requirement of Section 25-F of the Act when it issued the termination letter on 23.8.2017. The termination should not be automatic in the event of disposal of the writ by the Hon'ble High Court since writ was not preferred against any order of termination or in a contingency resulting in the retrenchment of the workman. Therefore, the termination of the workman with effect from 23.8.2017 without compliance of the provisions of Section 25-F of the Act is not legal and justified. The principles set out by the Hon'ble Apex Court in the case of the Secretary, State of Karnatak Vrs. Uma Devi as under reference is not applicable in the present case. The Tribunal has authority within the provisions of the Act to hold that any termination without compliance of Section 25-F of the Act is illegal and unjustified provided it is established that the workman either a permanent or, a temporary has worked for a period of 240 days continuously and uninterruptedly before retrenchment and his/her termination was other than on account of misconduct.

12. Now coming to the relief to which the workman is entitled, it is seen that the workman was in employment from May,1996 to August,2017 i.e., for a period of more than 21 years. She was receiving remuneration on daily wage basis in skilled category of workman. She was provided with other facilities like, quarter, medical treatment, bonus etc. There is nothing on the record or in the evidence of the management to establish that the post of Steno-Typist is not available in the meanwhile or the same is filled up. There is also no evidence to infer that the workman was engaged in any other employment after termination of her service. No pleading and evidence has been advanced by the management that the workman was not sincere to her job or she was not discharging her duties to the utmost satisfaction of her authorities. Having regard to the above facts and circumstances, it is a fit case wherein the workman should be reinstated. But she is not entitled to any back wages as she did not render any service for the period of her termination. So far the prayer of regularization of service is concerned, it may be stated here that the provisions of Section 2-A of sub-section (2) and sub-section (3) can not be resorted to for raising such dispute directly before the Tribunal. Such dispute of an individual cannot be entertained under Section 2-A, (2) and (3) of the Act Hence the marit of claim for regularization of service can not be taken into consideration in this case and the said prayer stands rejected.

13. Therefore, for the reasons discussed above, the termination of service of the workman with effect from 23.08.2017 was neither legal nor justified in the eye of law. In the facts and circumstances of the case, as discussed in supra, the applicant-workman is entitled to be reinstated in service, but, without any back wages. Both the managements are directed to reinstate the workman on daily wage basis fixed for skilled workman like she was engaged prior to her termination on 23.08.2017. The Award is to be implemented within a period of 60(sixty) days from the date of its Gazette Publication failing which, the applicant-workman is entitled to full wages from the date of Award with interest at a rate of 6.5% (six and half percent) per annum till the implementation of the Award. Accordingly, the Award was passed and I.D.Case was disposed of. The Office is to take steps for publication of the Award.

B. C. RATH, Presiding Officer

नई दिल्ली, 24 जनवरी, 2020

का.आ. 116.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मै. फाइव स्टार शिपिंग एजेन्सी (प्रा.) लि., हल्दिया डोक कम्पलैक्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकत्ता के पंचाट (संदर्भ सं. 44/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 24.01.2020 को प्राप्त हुआ था।

[सं. एल-32011/02/2015-आईआर (बी-II]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 24th January, 2020

S.O. 116.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 44/2015) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court,* Kolkata as shown in the Annexure, in the industrial dispute between the management of M/s. Five Star Shipping Agency (P) Ltd., Haldia Dock Complex, and their workmen, received by the Central Government on 24.01.2020.

[No. L-32011/02/2015-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 44 of 2015

Parties: Employers in relation to the management of Haldia Dock

AND

Their workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management : None

On behalf of the Workmen : None

State: West Bengal. Industry: Port & Dock

Dated: 14th January, 2020

AWARD

By Order No.L-32011/02/2015-IR(B-II) dated 15/21.07.2015 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of M/s. Five Star Shipping Agency (P) Ltd., contractor of Haldia Dock Complex in denying the 23-points charter of demands raised by the Union is legal and/or justified? If not, what relief the workmen are entitled to?"

2. When the case was taken up today for hearing, none appeared on behalf of the parties concerned. It appears from the record that after the reference, notices were issued to the parties and in response to which the union and Haldia Dock Complex appeared, but none ever appeared on for M/s. Five Star Shipping Agency (P) Ltd. Inspite of opportunities neither the union filed its statement of claim, nor the Haldia Dock Complex filed its written statement. Haldia Dock Complex, however on 27.04.2016 from relieve it from the present proceeding. None is appearing for the union since 27.04.2016, i.e. eight consecutive dates to pursue its case.

3. On consideration of the facts and circumstances of the case, it appears that the union has no grievance at present in respect of 23 points charter of demands as mentioned in the order of reference. Therefore, there exists no dispute for adjudication.

4. Therefore, the reference is disposed of accordingly.

Justice RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,

The 14th January, 2020

नई दिल्ली, 24 जनवरी, 2020

का.आ. 117.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ सं. 13/2019) को प्रकाशित करती है जो केन्द्रीय सरकार को 24.01.2020 को प्राप्त हुआ था।

[सं. एल-12012/03/2019-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 24th January, 2020

S.O. 117.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 13/2019) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No.* 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of Bank of India, and their workmen, received by the Central Government on 24.01.2020.

[No. L-12012/03/2019-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947

Reference: No. 13/2019

Employer in relation to the management of Bank of India, Gumla

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer

Appearances:

For the Employers : Sri D.K. Verma. Adv.

For the workman. : None

State : Jharkhand. Industry:- Banking

Dated 26.12.2019

AWARD

By Order No.L-12012/03/2019-IR (B-II) dated 11/02/2019 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the claim of Sh. Narendra Kumar Prasad, Staff Cashier, Kotam Branch, Gumla Distt that the order of penalty dated 14.07.2012 "Removal from Service" passed by the management of Zonal Manager, Bank of India, Ranchi is disappropriate, illegal and arbitrary? If yes, what relief he is entitled to?''

2. After receipt of the reference, both parties were noticed but the workman didn't appear before the Tribunal. The notices issued against union is returned with endorsement that the addressee had left the address. However, the management has appeared in this case. Case is pending since 05/03/2019 and workman is not appearing before Tribunal. so, it is felt that workman has lost his interest in this matter. Hence No Dispute Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 24 जनवरी, 2020

का.आ. 118.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कावेरी कल्पतरू ग्रामीण बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगि विवाद में केन्द्रीय सरकार औद्योगि अधिकरण बंगलोर के पंचाट (संदर्भ संख्या 13/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.01.2020 को प्राप्त हुआ था।

[सं. एल-12012/05/2012-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 24th January, 2020

S.O. 118.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 13/2012*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court* Bangalore as shown in the Annexure, in the industrial dispute between the management of Cauvery Kalpatharu Grameena Bank and their workmen, received by the Central Government on 24.01.2020.

[No. L-12012/05/2012-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 03RD JANUARY 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 13/2012

I Party	**II Party**
Sh. H.S. Nagaraju, # 6461, 2nd Phase Vijayanagar, 4th Stage, Vijayanagar Post, MYSORE-570017.	The Chairman, Cauvery Kalpatharu Grameena Bank, CA-20, Vijayanagar, MYSORE.

Appearance :

Advocate for II Party : Mr. N. Srinivasa Rao

AWARD

The Central Government vide Order No. L-12012/05/2012-IR(B-I) dated 23.03.2012 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the action of the management of Cauvery Kalpatharu Grameena Bank, Mysore, Karnataka in imposing the punishment of removal from the services w.e.f. 05.04.2007 upon Sh. H.S. Nagaraju is legal and justified? To what relief the workman is entitled?"**

1. The dispute is raised by the Ex-employee of the 2nd Party who is removed from service w.e.f 05.04.2007 as a measure of Disciplinary Action consequent upon certain charge came to be proved against him in a Domestic Enquiry. The workman in his claim petition challenged the punishment order on various ground like the charge sheet was vague, the charges were not proved, the documents produced by them are concocted, Sh. Puttegowda the author of Ex P-28 was not examined during the enquiry etc. He alleges that the enquiry was **"VOID ABNITIO"**.

2. The 2nd Party in their counter statement justify their action. It is contended that, the Disciplinary Authority has drawn a speaking order by concurring with the Enquiry finding and also considering the entire record. Before imposing the punishment, he was given personal hearing. The submission made by him during the personal hearing was also considered; the Enquiry Officer recorded that, he is guilty of all the charges alleged in the charge sheet; he is imposed with the punishment of removal from service which shall not be disqualification for future employment. The Appeal preferred by him is also rejected.

3. On the rival pleading of the parties touching the validity of the Domestic Enquiry conducted against the 1st Party, Preliminary Issue was raised, tried and adjudicated upholding validity of Domestic Enquiry as fair and proper.

4. The allegation against the workman as per the charge sheet dated 12.08.2003 was, firstly, a Customer Sh. Puttegowda called on the Branch at 12.45 pm on 12.04.2003 to remit cash of Rs. 2,450/- to the credit of his Savings Bank A/c No. 763, the Branch Manager at that time was away from the Branch on official work. The 1st Party workman prepared credit voucher without mentioning the date and branded it as 'late receipt'; obtained the signature of the depositor and affixed cash received seal with signature and issued counter foil to the depositor without waiting for the arrival of the Branch Manager to deposit the amount at Branch safe; he failed to account in the books of accounts of the Bank. He made entry in the pass book of the depositor mentioning the date as '25' without mentioning the month and the year; he also made an entry in the ledger sheet of SB A/c of the customer without mentioning the date, month and raised the balance from Rs. 8,941/- to Rs. 11,291/-;

initialled against the balance by forging Branch Manager's initial. He visited the Alathur Branch on 15.04.2003 but did not hand over the key charge to the Branch Manager also failed to handover Rs. 2,450/- remitted by Sh. Puttegowda. The depositor called upon the branch on 12.05.2003 to withdraw the amount from his SB A/c, the CSE was on leave from 12.05.2003 to 15.05.2003. When the matter was brought to the notice of the Branch Manager, he confessed the guilt and visited the Branch on 13.05.2003 and remitted the amount of Rs. 2,450/- misappropriated by him.

Secondly, on 15.04.2003 a customer Sh. Madegowda visited the branch at 10.00 am to remit cash of Rs. 14,800/- to his SB A/c No. 1201, the CSE was about to proceed on leave on that day; but he accepted the cash amount but did not hand over the same to the Branch Manager on his arrival to account the same in the books of accounts of the Branch; he made an entry in his savings bank ledger sheet Rs. 14,800/- in the credit column by putting the month as 'May' and the date as '14' and raised the balance Rs. 510/- to Rs. 15,310/-; made an initial against the said balance by forging the Branch Manger's initials; he issued the pass book to the customer by making the entry in respect of Rs. 14,800/- the matter came to light on 30.04.2003; when brought to his notice the CSE remitted Rs. 14,800/- on 22.05.2003 by taking the signature of Sh. Madegowda on pay-in-slip besides giving undertaking about non-accounting of the said amount on 15.04.2003. Owing to his fraudulent act, the depositor was allowed to withdraw Rs. 6,000/- on 15.05.2003 through withdrawal slip. Thus, there was an overdraft to the extent of Rs. 5,490/- which continued till 22.05.2003.

Thirdly, on 11.04.2003 he received Rs. 10,435/- from Smt. Gayathri, representative of Himavad Gopalaswamy Mahila Sangha, towards the instalments to the SB A/c of the Sangha and issued counterfoil with his signature but did not account the amount in the books of accounts of the Branch viz Receipts Scrolls; he entered the said amount in the pass book and Savings Bank ledger sheet by overwriting as '15' and raised the balance from Rs. 5814/- to Rs. 16249/-. He authenticated the balance by forging the initial of the Branch Manager, the discrepancies was noticed on 20.05.2003 while tallying the Saving Bank ledger balance for the month of April 2003. When the clarification was sought from him, he accepted non accounting of the said amount and credited Rs. 10435/- to the SB A/c 2120 on 22.05.2003 by obtaining signature of Smt. Gayathri; he also made alteration to the entries already made in the pass book by striking out the credit entries and re-entered the same in the debit column. Smt. Gayathri and Smt. Ratnamma have represented in their letter dated 29.05.2003 that, the CSE approached Smt. Gayathri on 20.05.2003 at 6.00 pm at her residence, sought pardon and obtained the signature of Smt. Gayathri on new Savings Bank Credit Challan and collected the pass book of Mahila Sangha, counter foil challan book and tore off the original counter foil dated 11.04.2003 issued for accepting Rs. 10,245/- from the counter foil challan book, he returned the pass book along with Credit challan of Rs. 10,435/- dated 22.05.2003. Those 2 ladies demanded interest for Rs. 10,435/- for the period 11.04.2003 to 22.05.2003. Owing to his fraudulent act, the account was allowed to be operated; Rs. 50,200/- was withdrawn from the Saving Bank Account on 20.05.2003 resulting into the said saving bank account overdraft to the extent of Rs. 5975/-.

The above charges if established, amounts to violation of Regulations No. 17 and 19 of Cauvery Grameena Bank (Officer and Employees) Service Regulation, 2000.

5. The 1st Party participated in the enquiry with his Defence Representative; two witnesses were examined by the prosecution. The first witness was the then Branch Manager and the second witness was Smt. Gayathri representative of Himavad Gopalaswamy Mahila Sangha / Self-help group. Both witnesses were cross examined. Through PW-1 the documents in support of all the three charges were exhibited.

PW-1 during his evidence had identified the representation given by Smt. Gayathri and Smt. Rathnamma marked as Ex P-34. The representation was identified by PW-2 Smt. Gayathri herself; the narration at Ex P-34 fully corroborates the third charge; the letter given by the CSO confessing that, he might have received the cash probably at 12.04.2003 at 12.30 pm when the Branch Manager was not in the Branch was also produced as Ex P-27, the cross examination of PW-2 could not successfully shatter the veracity of her examination in chief evidence. Ex P-9 / the receipt scroll of 12.04.2003 reflected that after receiving the cash from PW-2 on 11.04.2003 no entry was made in the receipt scroll or on the subsequent days i.e. upto 21.05.2003, a scratched entry for Rs. 10,435/ was made in the credit column of Ex P-29 (Passbook) mentioning the date as April 11 and raising the balance from Rs. 5,814/- to Rs. 16,249/- on the same date Rs. 10495/- is entered in the debit column of Ex P-29; at Ex P-28 / ledger sheet Rs. 10,435/- was taken in the credit column and the balance is raised, the date of entry is overwritten as 'April 15' with the signature of the Manager in the initial column, said initial was disowned by PW-1, he also had stated that the ledger is not available to anybody except the cashier.

Above all, tangible evidence was sufficient to the Enquiry Officer to record the finding of guilt in respect of third charge. Relying on the documentary evidence and oral evidence of PW-1 without much discussion the Enquiry Officer has recorded the finding of guilt in respect of charge No. 1 and 2 also. The

Disciplinary Authority issued a detailed show cause notice re-appreciating the evidence recorded during the enquiry, proposing the punishment of removal from service.

By way of his reply the workman sought to exonerate him from the charges keeping in view that, he has been kept under suspension for the last 3 and half years, thus already been punished; he is left with 3 and half years of service. The Disciplinary Authority confirmed the proposed punishment order as proposed in the show cause notice; for each charge he is imposed punishment of removal from service which shall not be disqualification for his future employment. The Appellate Authority considered the grounds urged by the workman in his appeal memo but on a perusal of the evidence available on record proceeded to confirm the penalty.

6. It appears that, the 1st Party is no more but there is no official confirmation about him though he was represented by a counsel. No more submission is made on his behalf after the Preliminary Issue was adjudicated. The charges proved against the workman, demonstrate that he intentionally indulging in temporary misappropriation of customer's money, forged the signature of the Manager, tampered the Bank records and caused loss to the Bank since the customers were allowed overdraft facility owing to the fraudulent entries made by him. Being the employee of the financial institution utmost honesty and integrity is expected of him. The Disciplinary Authority has lost confidence with him and has rightly removed him from service and the punishment is neither excess nor harsh. There is no merit in his claim.

AWARD

The reference is rejected.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 03rd January, 2020)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 24 जनवरी, 2020

का.आ. 119.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, भुवनेश्वर के पंचाट (संदर्भ संख्या 54/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.01.2020 प्राप्त हुआ था।

[सं. एल-12012/48/2014-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 24th January, 2020

S.O. 119.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 54/2014) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 24.01.2020.

[No. L-12012/48/2014-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

IN THE CENTRAL GOVT.INDUSTRIAL TRIBUNAL, BHUBANESWAR

Tr. Industrial Dispute Case No. 54 of 2014

Dated of passing of the award 01 .07.2019

Present:-

Shri B. C. Rath, LL.B., Presiding Officer,
Central Government Industrial Tribunal, Bhubaneswar

Between:-

The Chief Manager,
State Bank of India,
Rayagada Main Branch,
Rayagada(Orissa). …First Party- Management

-Versus-

Shri Abrahm Singh,
Opp. KNK Rice Mill,
Jagannath Temple Street,Main Road,
Rayagada,(Orissa)-765001. …2nd.Party Workman/Union

Appearances:-

For the First Party Management : Sri A. K. Prusty

For the 2nd Party Workman : Self

AWARD

The Government of India, Ministry of Labour and Employment have referred an Industrial Dispute between the above named parties for its adjudication vide its order No,L-12012/48/2014-IR(B-I) under Clause (d) of sub-section(1) and sub-section(2-A) of Section 10 of the Industrial Disputes Act,1947(14 of 1947) and the Schedule of the reference is as follows:-

"Whether the employee (temporary) and Part time engaged by the Bank from the period 1997 to July, 2010 is eligible for benefit under Section 25-F of I.D. Act with interest or not ? If yeas,

1) Who will pay the workman the contractor or the SBI, Rayagada (PE)? The contractor was discontinued since July,2010?"

2. Sworn of unnecessary details the case of the 2nd Party Workman is that he was engaged as a Watch Man and posted in the Main Branch, Raygada State Bank of India with effect from 23.2.1997. According to him his monthly remuneration was fixed at Rs.1200/- per month at the time of his appointment and his employment was effected through out sourcing agency Jagat Janani Security Services, Jaypur. The contract of out sourcing between the 1st Party Management and the out sourcing security agency was rescinded on 31st October,2007. But, the 1st Party Management allowed him to continue in the service of Watch Man. On 23.7.2010 he was suddenly retrenched from service by the Chief Manager of the 1st. Party Management without compliance of the requirement of Sec.25(f) of the Act. At the time of his alleged retrenchment he was paid a monthly wage of Rs.1500/- . Hence, it has been prayed by the 2nd Party to declare his retrenchment as illegal and unjustified and he shall be reinstated with back wages. It is also alleged in the claim statement that though he was in the category of Semi skilled labourer minimum wages fixed for such semi skilled labourer was not paid to him. Though, he continued in the service of Watch Man for 13 years he was not extended with the benefit of Employees Provident Fund Contribution. Hence, the 2nd Party has also claimed arrear wages as per the provisions of Minimum wages fixed by the Central Government and benefit of Provident Fund Contribution.

3. In its Written Statement the 1st Party Management has refuted the allegation and contested the claim contending that the disputant Workman was not appointed by it and there was no employer and employee relationship between it and the disputant. The reference is not maintainable in view of non-joinder of the out sourcing agency. According to the Management a security guard was allotted duty in front of the main branch, Raygada through out sourcing agency M/s. Creative Security Agency, Jaypur which is renamed later as Jagat Janani Security Service since the branch was located on the road side of the market area of Rayagada. There is no parking space inside the Bank Premises and Cycles, Two Wheelers and other vehicles used by the customers are being parked on the road side itself causing traffic problem. On the instruction of the local police the Management Bank deployed the Guard through the out sourcing agency to regulate the parking of vehicles as well as keeping watch on suspicious persons, intruders. The Management Bank has three Armed Guard to guard the Bank Premises and cash remittance. Hence, there was no scope of employing the disputant as a guard. That apart the Management has its own Recruitment Rules for such appointment of Armed Guards. As the security agency was given a contract to deploy a guard in front of the Bank on working days of the Bank an amount of Rs.1200/- per month was given for such contract which was subsequently enhanced to Rs.1500/-. The Security Agency was deputing the disputant and one Jayant Kumar Mohanty on rotation basis . As no appointment was given by the Bank, question does not arise for retrenchment of the Disputant. The 1st Party Management has also denied the engagement of the disputant for l240 days continuously and uninterruptedly in any period more particularly in the calendar year preceding to his alleged retrenchment. There being no engagement of the disputant by the 1st Party Management there was no violation of provisions of Section-25(f) of the Act. Hence, prayer is made for rejection of the claim statement.

4. On the aforesaid pleadings of the parties the following issues have been settled for just and proper adjudication of the dispute.

ISSUES

1) Whether the reference is maintainable?

2) Whether the employee (temporary and part time) engaged by the Bank from the period 1997 to July, 2010 is eligible for benefit under Section 25(f) of the I.D. Act with interest or not ?

3) If, yes, who will pay the workmen the contractor or the SBI, Rayagada (PE)?

4) If not, to what relief the 2nd Party workman is entitled?

FINDINGS

5. In order to substantiate its case the 2nd Party Workman has examined himself as W.W.1 and relied on the documents such as copy of the Written Statement of the 1st Party Management submitted before the ALC, Bhubaneswar, Copy of Experience Certificate dated. 30.6.2001, issued by the Management, copy of experience certificate dated.12.10.2007 issued by the Management, copy of experience certificate dated.18.11.2008, copy of experience certificate dated. 5.10.2009 issued by the Management, Xerox copy of Bankers Cheque issued by the Bank, and copy of the postal acknowledgment which are marked as Ext.1 to Ext.4 respectively. On the other hand the 1st Party Management has examined its Chief Manager as M.W.1 to refute the claim of the 2nd Party disputant.

6. Law is well settled that when a workman who has been retrenched illegally due to non-compliance of the provisions of Sec.25(f) of the Act, the burden lies on him to prove that he was engaged or employed by the employer and he worked for him for more than 240 days continuously and uninterruptedly in the calendar year preceding to his alleged retrenchment. If, the pleading and evidence of the 2nd Party Workman are taken for scrutinisation it is found that the disputant workman was not issued with any appointment or engagement letter. No authentic evidence seems to have been led before the Tribunal to show the employer and employee relationship between the parties. Not a single scarp of paper except copies of four numbers of Banker Cheques are filed from which it cannot be inferred that wages for such engagement of 240 days continuously were paid by the 1st Party Management. Copies of Banker Cheques i.e. Ext.3 series only lead to a conclusion that the Bank had issued the cheques in favour of the disputant. The reason for issuing the cheques is not coming out from these documents. On the other hand the disputant has pleaded and testified that he was engaged through a out sourcing agency. Hence, there was no direct employer and employee relationship between the Management and the Disputant. In the above back drop the evidence of the Chief Manager supporting the pleading of the Management cannot out rightly be rejected. Further, his evidence is no way demolished by the 2nd Party workman. On the other hand the correspondence Ext.1 filed by the workman vindicates the stand of the Bank. The copies of the Conduct Certificates do not establish the claim of the disputant since the workman has not named the person who had issued the certificates. These certificates are unilateral documents and without examination of authors of those certificates no conclusion can be drawn that the disputant was employed or appointed by the Management directly and he was engaged for more than 240 days continuously in a calendar year.

Further, it is elicited from the cross examination of the disputant that he was not called for any interview for the post. Remuneration was paid to him by the out sourcing agency. He has admitted that the out sourcing agency was his supervising authority. Till 2007 he was receiving salary from the said agency. He has no salary account in the Management Bank. Thus his evidence is far from wanting to establish his claim that he was ever appointed or engaged directly by the Management Bank to perform the guard duty and he was paid wages by the Management Bank for being employed for more than 240 days continuously and uninterruptedly in a calendar year preceding to his alleged retrenchment. On the other hand it is crystal clear from his pleading and evidence that he was deployed by the Security Agency and he was paid by the said agency for such work.

7. Having regard to the above facts and circumstances as well as the settled principle enunciated by the Hon'ble Apex Court it can be safely held that the Management Bank cannot be held liable for any retrenchment of the disputant by the out sourcing agency Jagat Janani Security Service without making payment of notice pay and rehabilitation compensation. Since the disputant fails to establish that his service was out sourced by the 1st Party Management continuously for a year or more than that the Management Bank cannot also be held liable to pay EPF contribution of the disputant. Thus the claim of the disputant being devoid of merit stands rejected.

Accordingly the reference is answered.

B. C. RATH, Presiding Officer

नई दिल्ली, 24 जनवरी, 2020

का.आ. 120.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईशट कोशट रेलवे प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, भुवनेश्वर के पंचाट (संदर्भ संख्या 69/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.01.2020 को प्राप्त हुआ था।

[सं. एल-41011/58/2016-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 24th January, 2020

S.O. 120.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 69/2017) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of E.Co. Railway and their workmen, received by the Central Government on 24.01.2020.

[No. L-41011/58/2016-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, BHUBANESWAR

Industrial Dispute Case No.69 of 2017

Dated of passing of the award 20.08.2019

Present:

Shri B. C. Rath, LL.B., Presiding Officer,
Central Government Industrial Tribunal,
Bhubaneswar.

Between :

1. The DEN, Civil,
E. Co. Railway, Khurda Road,
Orissa.

2. General Manager,
E. Co. Railway, Jatni, Khurda Road,
Orissa. …1st Party-Managements

-Versus-

1. The Secretary,
All India Central Council of Trade Unions,
A-13, Nagabhusan Bhavan, Ashok Nagar,
Bhubaneswar, (Orissa).

2. Shri Ananta Pattnaik,
Rly Contractor, At/P.O. Bachhara,
Jatni, District-Khurda, Orissa. …2nd. Party Workman/Union

Appearances:-

For the First Party Management : Sri

For 2nd Party workman/Union : Sri S.Mishra

AWARD

The Government of India, Ministry of Labour and Employment have referred an Industrial Dispute between the above named parties for its adjudication vide its order No,L-41011/58/2016-IR(B-1) in exercise of its authority conferred under Clause (d) of sub-section(1) and sub-section(2-A) of Section 10 of the Industrial Disputes Act,1947(14 of 1947) and the Schedule of the reference is as follows:—

1) "Whether the action of the Management of General Manager, E. Co. Railway, Khurda Road, Orissa and the contractor M/s. BD Sahu working as Labour contractor under East Coast Railway, Khurda, in terminating the services of Shri Uresh Naik and 11 others (as per annexure A) House Keeping contract workers, without complying section-25-(F) of Industrial Disputes Act,1947 is legal and justified ? If not, what relief the workmen are entitled to ?"

2) "Whether the disengagement of services of Shri Uresh Naik and 11 others by the new contractor M/s. A Pattnaik and offering employment to fresh workmen in place of old and experienced workmen who were employed around 07 years with the same Principal Employer i.e. DRM Office, East Coast Railway, Khurda is legal and /or justified? If not, what relief the workmen are entitled to?"

2. On receipt of the reference notice was issued to the 2nd Party Union who made his appearance and filed its statement of claim. Thereafter, the Management was noticed to file its written statement. As the Management failed to appear and file its written statement inspite of notice being found sufficient , it was set exparte and the case was posted for taking evidence of the 2nd party Union. When the matter was in such stage the 2nd Party Union failed to attend the Court and adduce its evidence inspite being given several adjournments. The adjudication process cannot be protracted for an indefinite period awaiting appearance of the parties on their sweet will. As a matter of fact a dispute cannot be settled in absence of the parties more particularly in absence of pleadings and evidence of the disputant. As the disputant does not evidence any interest to proceed with the case and there is absolutely no evidence/materials before the Tribunal for adjudication of the dispute, there is no alternative than to dismiss the reference case without passing any award since the I.D. Act and its Rules do not mandate that a nil award or a no dispute award is to be given in case of absence of the disputant in an adjudication process. Rather, it has been well settled that passing of a no dispute award/nil award is a misconception. It is also pertinent to mention here that until adjudication of the dispute referred to by the authority concerned, an award cannot be made within the meaning of the award as defined under section 2-b of the Act. The above position has been settled in a decision of the Calcutta High Court in the case of B.R. Bermen and Mohatta (India) Pvt. Ltd., -Versus- Seventh Industrial Tribunal, West Bengal and others short noted in 1977 Lab. I.C(NCC)13(CAL). In the above back drops the case registered on the reference is dismissed without any award and accordingly the reference is disposed of.

A copy of this order be sent to the Government of India Ministry of Labour for taking necessary action at their end.

B. C. RATH, Presiding Officer

नई दिल्ली, 24 जनवरी, 2020

का.आ. 121.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, भुवनेश्वर के पंचाट (संदर्भ संख्या 41/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.01.2020 को प्राप्त हुआ था।

[सं. एल-12025/01/2020-आईआर (बी-1]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 24th January, 2020

S.O. 121.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 41/2014) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 24.01.2020.

[No. L-12025/01/2020-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL : BHUBANESWAR

Present: Sri B.C. Rath,LL.B., Presiding Officer,
Central Government Industrial Tribunal, Bhubaneswar

I.D. Case No. 41 of 2014

Date of passing of award. 30.10.2019

1) The Managing Director,
State Bank of India, State Bank Bhawan,
8th Floor, Madame Cama Marg, Mumbai-400 021.

2) The Branch Manager,
SME Branch, State Bank of India, Ground Floor,
Sambalpur-768 001 …1st Party Managements

-Versus-

Shri Kundan Luha, aged 35 years,
S/o. Sri Muna Luha, At-Pension Para,
P.O./District-Smbalpur-768 001. …2nd Party Workman

Appearance:-

For the Management : Sri S. K. Khata

For the Workman : Self

AWARD

This award is directed against an applicant U/s.2-A(2) of the I.D.Act,1947 (herein after referred to as "the Act") preferred by the above named applicant workman wherein and whereby an Industrial Dispute has been raised as to his alleged retrenchment/termination from service by the 1st Party Management Bank.

2. The case of the 2nd Party Workman as revealed from his Statement of Claim is that he was working as a Sweeper in the office of the Management No.2 from 11.7.1997 to 30.10.2010 continuously and uninterruptedly. At the time of initial employment he was paid monthly wages through vouchers showing under contingent expenses. Thereafter, his engagement was on daily wage basis which was 1/3rd of admissible salary of an employee of the Management Bank in similar category. He was also paid bonus annually like other workmen of the Bank. His engagement was more than 240 days in a calendar year in between 11.7.1997 to 30.10.2010. When he was continuing as a Sweeper on daily wage basis he made a representation on 11.8.2006 for regularization of his service in the cadre of " General Attendant" keeping in view a circular of the Bank vide o.RBO/SAM/PER & HDD/Misc. No.208 dated.3.3.2006. No action was taken on such representation. Suddenly, on 30.10.2010 he was disengaged from his employment by the Chief Manager, SBI, CB, Sambalpur and he was paid Rs.19921/- as compensation, cheque of Rs.2957/- towards notice pay .It is the claim of the workman that temporary messengers engaged subsequent to his employment as Sweepers were regularized in service whereas he being engaged for about 13 years was disengaged without any reason. The Management Bank having more than 300 employees in the Head Quarter of Sambalpur did not comply the requirement of Section 25(n) when he was disengaged from service. The compensation paid to him in shape of Cheque was not also adequate and less than the amount to which he was entitled to . Thus, his retrenchment being in violation of the provisions of Section 25(g), 25(n) was illegal and unjustified and not sustainable in the eye of law . Hence, prayer has been made for his reinstatement with back wages and all service benefits. It is also the prayer to direct the Management to regularize his service.

3. On being noticed the Management Bank has contested the claim refuting the allegation raised by the applicant workman. It is the stand of the Bank that the applicant was never given any appointment in the Bank either temporarily or regularly. Since any appointment in the Bank is to be made in accordance to Recruitment Rules. The disputant was given a contract job of cleaning and sweeping the premises of the Management Bank at Sambalpur on temporary basis . He used to devote about one to one and half hours to sweep and to clean the Bank Premises and accordingly he was paid 1/3rd. of the minimum wages of an unskilled labourer prevalent during his engagement. According to the Management when the service of the workman was no more required he was informed on 30.10.2010 about his disengagement. He was also paid notice pay and rehabilitation compensation as per the provisions of Sec.25(f) of the Act as the engagement of

the applicant was temporary and casual in nature and for a specific work and no no right was vested on the applicant to continue in service. His engagement was for a specific work of cleaning premises and it was not an employment or appointment .and the provisions of I.D. Act is not applicable to the disputant workman when he was informed about his disengagement. It is the further stand of the Management that the engagement of the applicant being for specific purpose for temporary period on a specific rate of wage and it was intermittent and on need basis, there was no scope for the workman to raise any dispute under the provisions of I.D. Act. Since his engagement was temporary he was paid notice pay and rehabilitation compensation on precautionary basis to comply the requirement of Sec.25(f) of the Act before he was disengaged from his contract work of sweeping and cleaning . According to the Management the applicant cannot claim for his continuation in the job or his reinstatement keeping in view the principles settled by the Hon'ble Apex Court in the case of Secretary State of Karnatak and others –Vrs- Uma Debi and others AIR 2006 S.C. 1806 wherein it has been observed that when person gets engagement on contractual basis and the engagement is not based on a proper selection as required by any Recruitment Rules or procedure and he is aware of the consequence of the appointment being temporary, casual or contractual in nature, he cannot invoke the theory of legitimate expectation for being confirmed in the post when appointment to the post can be made only by following a proper procedure for selection. Thus, it is the stand of the Management Bank that the applicant workman being a part time worker for a specific contractual job and paid specific amount on day to day basis for doing that specific work can not claim for his reinstatement under the I.D. Act and his application/statement of claim being devoid of merit should be rejected out rightly.

4. On the aforesaid pleadings of the parties the following issues have been settled for adjudication of the dispute.

ISSUES

1) Whether the present case is maintainable in law?

2) Whether the disengagement of the workman from service vide order No.46 dated.30.10.2010 of the Management No.2 is legal and justified ?

3) If, not, to what relief the workman is entitled?

5. In support of his claim the workman has examined himself as W.W.1 and relied upon certain documents like Xerox copy of the order No.46 dated. 30.10.2010 passed by the Management No.2, Xerox copy of representation dated. 11.8.2006 of the workman, Xerox copy of the letter dated. 3.3.2006 issued by the Management, Xerox copy of the letter dated. 5.1.2006 issued by the Management No. 2, Advocate Notice dated. 10.7.2012, Copy of Petition dated. 3.8.2012 filed by the workman before the R.L.C.(C) , Copy of the letter of RLC(C), Rourkela dated. 7.8.2012, copy of compliance letter of the workman dated. 13.8.2012 to the R.L.C.(C), Copy of Letter dated. 10.9.2012 of R.L.C.(C), Rourkela and Xerox copy of letter of RLC(C), Rourkela to the Secretary, Govt. of India, Ministry of Labour which are marked as Ext.1 to Ext.10 respectively. To refute the claim the Management has also examined its Chief Manager, SME Branch as M.W.1 to refute the claim

FINDINGS

6. For the sake of convenience all the issues are taken into consideration as they are linked to each other. As it appears from the pleadings and evidence of the parties that there is no serious dispute to the fact that the disputant workman was engaged from 11.7.1997 to 30.10.2010 in the office of the Management No. 2 Bank to work as a Sweeper. It is the stand and evidence of the Management that the workman was working 2 to 3 hours in a day for the job of Sweeping for which he was being paid in commensuration with the job done by him. Though a stand has been taken that the workman was employed intermittently and at the time of need, it is not seriously disputed by the Management that in between 1997 to 2010 he was ever engaged for less than 240 days in a calendar year. It is also emerging from the evidence and pleadings of the parties that he was paid directly by the Bank either from the contingent head or in other head. He was stated to have been paid bonus. His work appears to have been under the control and supervision of the Management No. 2.There is no document on the part of the Management to show that it was agreed by the workman that he would avail a specific amount in a month for doing a specific work of sweeping or cleaning premises and there was no employer and employee relationship between the parties. In the above back drops the applicant can be covered by the term "Workman" of the Management Bank as defined under the I.D. Act since a daily wager or a part time worker can be counted as a workman. Admittedly, on 30.10.2010 the applicant workman was issued with a letter of discontinuance of engagement under Ext.1. His such disengagement leads an inference that he was a temporary employee of the Management Bank and to a dispute raised by the workman. For all the aforesaid reasons it can be safely said that the applicant being a workman of the Management Bank No. 2

has a right to approach directly to this Tribunal U/s.2-A(2) of the Act in the event of his disengagement and the conciliation before the labour machinery having been failed. Therefore, the case is maintainable and accordingly the 1st issue is answered in favour of the workman.

7. **Issue No. 2:-** Coming to the question whether the discontinuation/ disengagement of the applicant under Ext.1 is illegal and unjustified, it may be stated that it is emerging from the evidence of the parties that no process of recruitment was held while the applicant was engaged as a part time Sweeper. But, there is nothing on the record to hold that he was not qualified to be eligible to work as a Sweeper as prescribed in the Recruitment Process or Rule It can not be also over sighted that he was continuing to work as a Sweeper for about 13 years. Further, his claim for converting him to a full time employee was taken into consideration keeping in view the Management Bank's Circular dated.3.3.2006 under Ext.3. The above facts find support from Ext.4 wherein and whereby his claim was recommended to the higher authority and this piece of document is not seriously challenged by the Management. There is also no specific denial by the Management Bank that any junior in similar footing was not given full time appointment keeping in view the circular under Ext.4. It is also emerging from the evidence of the parties that the Management Bank has more than 300 employees itself in Sambalpur Head Quarter. No evidence is coming forth from the Management Bank that requirement of Section.25(n) was complied before discontinuing the applicant workman. Be that as it may, mere compliance of notice pay and rehabilitation compensation cannot exonerate the Management Bank from the liability cast upon him by the provisions of l.D. Act. Therefore, retrenchment/disengagement of the applicant workman vide Ext.1 is undoubtedly illegal and unjustified and in violation of the requirement of the I.D. Act more particularly the provisions of Section 25(g) and 25(n) of the Act.

8. **Issue No. 3:-** Now coming to the question what relief to which the applicant workman is entitled, it is not disputed that the workman worked for more than 10 years in the Management Bank before his disengagement and the Management No.1 being fully satisfied with his performance had recommended his case for his full time engagement and there being no specific pleading and evidence on the part of the Management Bank that no junior to the applicant was absorbed or given full time appointment. Hence, it can be stated here that it is a fit case where reinstatement with full back wages is the appropriate relief to which the workman is entitled.

Hence, the Management is directed to reinstate the workman with full back wages within three months from the date of receipt of notification failing which he is entitled to bank rate of interest on fixed deposit from the date of the award.

Send a copy of the award along with original to the Ministry for its notification and necessary action at their end.

B. C. RATH, Presiding Officer

नई दिल्ली, 24 जनवरी, 2020

का.आ. 122.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आई सी आई सी आई बैंक लि. प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जयपुर के पंचाट (संदर्भ संख्या 34/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.01.2020 को प्राप्त हुआ था।

[सं. एल-12012/283/2004-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 24th January, 2020

S.O. 122.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 34/2005) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Jaipur as shown in the Annexure, in the industrial dispute between the management of ICICI Bank Ltd. and their workmen, received by the Central Government on 24.01.2020.

[No. L-12012/283/2004-IR(B-1)]

B. S. BISHT, Under Secy.

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर सी.जी.आई.टी. प्रकरण सं. 34/2005

पीठासीन अधिकारी : राधामोहन चतुर्वेदी

रेफरेन्स नं. L-12012/283/2004–IR(B-I) दिनांक 21/03/2005

गोपाल लाल कुमावत पुत्र श्री शंकर लाल कुमावत

निवासी – बुहारी माता गली,

आजाद चौक, निम्बाहेड़ा, चित्तोडगढ़।

बनाम

शाखा प्रबन्धक,
(पूर्ववर्ती द बैंक ऑफ राजस्थान लिमिटेड)
वर्तमान – आई.सी.आई.सी.आई. बैंक लि.,
निम्बाहेडा ब्रान्च, चित्तोडगढ़।

प्रार्थी की ओर से : कोई नहीं
अप्रार्थी की ओर से : श्री आलोक फतेहपुरिया –प्रतिनिधि

: **अधिनिर्णय** :
दिनांक : 03–12–2019

1. श्रम मंत्रालय भारत सरकार, नई दिल्ली द्वारा दिनांक 21.03.2005 को औद्योगिक विवाद अधिनियम 1947 (जिसे आगे मात्र अधिनियम कहा जावेगा) की धारा 10 उपधारा (1) (ड़ी) एवं (2) (ए) के अन्तर्गत प्रदत्त शक्तियों के प्रयोग में निम्नांकित विवाद इस अधिकरण को न्यायनिर्णयन हेतु प्रेषित किया गया।

> "Whether the contention of the workman Shri Gopal Lal Kumawat that he has worked continuously for more than 240 days in consecutive 12 months during the period from 10/11/96 to 12/2/2003 is correct? If yes, whether the action of the Branch Manager. The Bank of Rajasthan Ltd., Nimbahera Br. Distt. Chittorgarh (Raj.) in terminating the services of the workman w.e.f., 12/2/2003 is legal and justified? If not, to what relief the workman is entitled to and from which date?"

2. उपयुर्क्त विवाद प्राप्त होने पर अधिकरण द्वारा दिनांक 21.4.2005 को उभयपक्ष को नोटिस जारी कर आहूत किया गया और प्रार्थी को निर्देश दिया गया कि वह अपने दावे का अभिकथन प्रस्तुत करें। तत्पश्चात दिनांक 13.6.2005 को प्रार्थी की और से दावे का अभिकथन प्रस्तुत किया गया। प्रार्थी के दावे के संक्षिप्त तथ्य इस प्रकार हैं। प्रार्थी श्रमिक को विपक्षी नियोजक द्वारा दिनांक 10.11.96 से चपरासी पद पर दैनिक मजदूरी के आधार पर काम पर रखा गया। प्रार्थी बैंक के अन्दर साफ–सफाई, पानी भरने, डाक को चढ़ाने और डिस्पेच करने का काम विपक्षी संस्थान में दिनांक 12.2.2003 तक करता रहा। प्रार्थी को नियोजक द्वारा 1500 रूपये प्रति माह मजदुरी का भुगतान नकद किया जाता था। भुगतान उसे एक साथ न दिया जाकर टुकड़ों में दिया जाता था। यह भुगतान बैंक के नियमित कर्मचारी के नाम पर उठाया जाता था तथा उससे हस्ताक्षर करवाकर प्रार्थी को भुगतान कर दिया जाता था। दिनांक 10.11.96 से दिनांक 12.2.2003 तक स्थानीय डाक विवरण पुस्तिका जो विपक्षी द्वारा रखी जाती थी, विपक्षी से मंगवाया जाना आवश्यक है। दिनांक 12.2.2003 को बिना कोई कारण बताये मौखिक आदेश से प्रार्थी को सेवामुक्त कर दिया गया। प्रार्थी को सेवासमाप्ति से पूर्व कोई नोटिस, नोटिस वेतन एवं मुआवजा नहीं दिया गया और धारा 25 (एफ) अधिनियम के प्रावधानों का उल्लंघन किया गया। प्रार्थी ने इस अवधि में प्रत्येक वर्ष में 240 दिन से अधिक कार्य किया है। प्रार्थी को सेवामुक्त करते समय कोई वरिष्ठता सूची नहीं बनाई गई और अन्य व्यक्तियों को नियोजन में लिया गया। इस प्रकार अधिनियम की धारा 25 (एच) तथा नियम 77 व 78 का उल्लंघन भी किया गया। अतः वाद स्वीकार कर नियोजक द्वारा दिनांक 12.2.2003 को की गई प्रार्थी की सेवामुक्ति अवैध घोषित करते हुए सम्पूर्ण परिलाभों सहित सेवा की निरन्तरता सुनिश्चित करते हुए पुनः नियोजन में रखने का आदेश दिया जावें।

3. दिनांक 8.8.05 को विपक्षी की और से प्रतिउत्तर में वाद के तथ्यों को अस्वीकार करते हुए यह कहा गया कि दोनों पक्षों के मध्य नियोजक एवं कर्मकार के सम्बन्ध नहीं है। विपक्षी द्वारा प्रार्थी को न तो नियुक्ति दी गई और न हीं सेवामुक्त किया गया। प्रार्थी ने विपक्षी बैंक में कभी काम नहीं किया और विपक्षी ने वेतन के रूप में प्रार्थी को किसी राशि का भुगतान नहीं किया। विपक्षी द्वारा कोरियर सर्विस के माध्यम से डाक भिजवायी जाती थी। संभव है कि प्रार्थी कोरियर सर्विस के कर्मचारी के साथ कभी बैंक आ गया हो और बैंक के कार्यकलाप और प्रक्रिया को समझकर फर्जी प्रविष्टियां दुराशय से कर दी हों। सहायक क्षेत्रीय श्रमायुक्त (केन्द्रीय) के समक्ष समझौता कार्यवाही के दौरान टुकडों में भुगतान किया जाने का कोई तथ्य वर्णित नहीं किया था। लेकिन दावे में बाद में विचार कर यह तथ्य जोड़ा है। प्रार्थी ने अनाधिकृत रूप से बैंक अभिलेख को चोरी कर उसकी फोटोप्रतियां प्राप्त की होगी। विपक्षी ने अधिनियम के किसी

प्रावधान का उल्लंघन नहीं किया। प्रार्थी ने किसी भी केलेण्डर वर्ष में 240 दिन से अधिक कार्य नहीं किया। न हीं अन्य व्यक्तियों को विपक्षी ने सेवा में लिया। अतः प्रार्थी किसी अनुतोष को पाने का अधिकारी नहीं है।

4. दिनांक 26.8.2005 को पूर्व पीठासीन अधिकारी द्वारा निम्नांकित विवाद्यक विरचित किये गये :–

1. Whether the workman was engaged on 10.11.1996 as a 4th class by the non-applicant Bank, who continuously worked upto 12.2.2003 and whose service was terminated on 12.2.2003 in violation of Section 25-F of the Act?

2. Whether the non applicant bank has recruited the fresh hands after the termination of the workman in contravention of Section 25-H of the Act?

3. Relief, If any.

5. प्रार्थी ने अपने साक्ष्य में स्वंय गोपाल लाल कुमावत (प्रार्थी) को परीक्षित किया तथा प्रदर्श डब्ल्यु–1 से डब्ल्यू–20 तक प्रलेखों को प्रदर्शित किया।

6. विपक्षी दी बैंक ऑफ राजस्थान लिमिटेड का विलय वर्तमान में आईसीआईसीआई बैंक लिमिटेड में हो जाने के परिणामस्वरूप इस अधिकरण द्वारा दिनांक 28.6.2011 को आदेश पारित करते हुए राजस्थान बैंक के स्थान पर आईसीआईसीआई बैंक को विपक्षी के रूप में संयोजित किया गया तथा संशोधित वाद शीर्षक दिनांक 23.11.2011 को प्रार्थी ने प्रस्तुत किया।

7. विपक्षी ने अपने साक्ष्य में चेतन कुमार गर्ग शाखा प्रबन्धक को परीक्षित किया तथा प्रदर्श–एम 1 से प्रदर्श–एम 12 तक प्रलेखों को प्रदर्शित किया।

8. इस प्रकरण में दिनांक 20.7.2016 से प्रार्थी पक्ष अनुपस्थित चला आ रहा है। प्रार्थी पक्ष को बहस हेतु अन्तिम अवसर देते हुए दिनांक 18.11.2019 उभयपक्ष के तर्क सुनने हेतु नियत की गई थी, किन्तु प्रार्थी पक्ष दिनांक 18.11.19 को भी अनुपस्थित रहा। अतः विपक्षी प्रतिनिधि के तर्क सुने गये तथा उभयपक्ष द्वारा प्रस्तुत की गई साक्ष्य का परिशीलन किया गया।

9. विपक्षी का सर्वप्रथम यह तर्क है कि ये तथ्य प्रमाणित करने का सिद्धिभार प्रार्थी पर है कि वह विपक्षी के अधीन नियुक्ति होने तथा सेवासमाप्ति के पूर्ववर्ती एक केलेण्डर वर्ष की अवधि में 240 दिन से अधिक सेवा करने का तथ्य प्रमाणित करें, किन्तु प्रार्थी ने इस सिद्धिभार का उन्मोचन नहीं किया है। प्रार्थी ने इस तथ्य के सम्बन्ध में जो साक्ष्य प्रस्तुत की है वह मात्र डाक विवरण पुस्तिका के पृष्ठों की फोटोप्रतियां है। विपक्षी द्वारा प्रस्तुत प्रदर्श–एम 1 से प्रदर्श–एम 12 डाक विवरण पुस्तिका के पृष्ठों पर प्रार्थी ने स्वंय के हस्ताक्षर न होना स्वीकार किया है। विपक्षी ने अपने साक्ष्य से प्रार्थी के साक्ष्य का खण्डन किया है और यह प्रमाणित किया है कि प्रदर्श–एम 1 विवरण के अनुसार प्रार्थी के वर्ष 1997 से 2002 तक 55 दिन डाक विवरण पुस्तिका में हस्ताक्षर हैं। वर्ष 2002 में तो मात्र 7 दिन ही हस्ताक्षर किये हैं। इस प्रकार प्रार्थी द्वारा 240 दिन से अधिक सेवा विपक्षी के अधीन किया जाना प्रमाणित नहीं होता है। प्रार्थी ने स्वंय स्वीकार किया है उसे विपक्षी ने पत्र लिखकर नौकरी पर नहीं बुलाया। प्रार्थी को विपक्षी द्वारा वेतन भुगतान किये जाने का कोई प्रमाण नहीं है। प्रार्थी यह भी स्वीकार करता है कि फरवरी 2003 में उसके अतिरिक्त अन्य कोई दैनिक वेतन भोगी नहीं था। अन्य नियुक्त किये गये व्यक्तियों का प्रार्थी ने कोई विवरण प्रस्तुत नहीं किया है। विपक्षी द्वारा अपने तर्क के समर्थन में निम्नांकित न्यायिक दृष्टान्त प्रस्तुत किये गये :–

(1) 2018–II एल.एल.जे. 513 (सुप्रीम कोर्ट) मोहम्मद अली बनाम स्टेट ऑफ हिमाचल प्रदेश व अन्य।

(2) 2005 (105) एफ.एल.आर. 378 चीफ इन्जीनियर (कन्सट्रक्शन) बनाम केशव राव (मृतक) द्वारा विधिक प्रतिनिधिगण।

10. मैनें उभयपक्ष की साक्ष्य, विपक्षी प्रतिनिधि के तर्क एवं न्यायिक दृष्टान्तों में पारित विधि पर ध्यानपूर्वक मनन किया। तदुपरान्त विवाद्य बिन्दुओं पर क्रमिक निर्णय इस प्रकार है :–

<u>विवाद्यक बिन्दु संख्या 1</u> :– प्रार्थी गोपाल लाल कुमावत ने अपने शपथ–पत्र में यह कहा है कि उसे विपक्षी द्वारा दिनांक 10.11.96 से दैनिक मजदूरी के आधार पर लिया गया था किन्तु प्रार्थी यह स्वीकार करता है कि उसे बैंक द्वारा कोई नियुक्ति पत्र नहीं दिया गया था। प्रार्थी ने यह भी स्वीकार किया है कि उसके पास काम करने का कोई प्रमाण पत्र नहीं है उल्लेखनीय है कि विपक्षी ने स्पष्ट रूप से, प्रार्थी को नियुक्त किया जाने एवं उसकी सेवा समाप्त करने के तथ्य अस्वीकार किये हैं। माननीय सर्वोच्च न्यायालय ने अपने निर्णय चीफ इंजीनियर (कन्सट्रक्शन) बनाम केशव राव (मृतक) के निर्णय में यह कहा है कि एक केलेण्डर वर्ष में 240 दिन से अधिक लगातार कार्य करने के तथ्य को प्रमाणित करने का प्रारम्भिक सिद्धिभार कर्मकार स्वंय पर ही आरोपित होता है। यदि यह प्रारम्भिक सिद्धिभार उन्मोचित कर दिया जावें तथा नियोजक विखण्डन साक्ष्य प्रस्तुत करने में विफल रहें तभी यह कहा जा सकता है कि कर्मकार द्वारा एक केलेण्डर वर्ष में 240 दिन से अधिक सेवा की गई।

11. इसी प्रकार माननीय सर्वोच्च न्यायालय ने मौहम्मद अली बनाम स्टेट ऑफ हिमाचल प्रदेश व अन्य के निर्णय में यह मार्गदर्शन दिया है कि यदि कर्मकार ने सेवासमाप्ति की तिथि के पूर्ववर्ती 12 कैलेण्डर मासों में 240 दिन से अधिक

कार्य करना प्रमाणित किया हो तभी यह कहा जायेगा कि उसे धारा 25 (एफ) अधिनियम के प्रावधानों का संरक्षण प्राप्त है।

12. इन निर्णयों में पारित विधि के प्रकाश में साक्ष्य का विवेचन करने पर यह प्रकट होता है कि प्रार्थी ने अपने अभिवचनों एवं साक्ष्य में गम्भीर विरोधाभास प्रस्तुत किया है। अपने वाद में प्रार्थी ने यह कहा है कि उसे नियमित कर्मचारी के नाम पर कभी 500, तो कभी 700, तो कभी 400 रूपये का भुगतान किया जाता था, किन्तु अपने साक्ष्य के शपथ–पत्र में प्रार्थी ने बैंक के नियमित कर्मचारी के नाम पर टुकडों में भुगतान किया जाने का कथन नहीं किया है। प्रार्थी ने अपने सेवाकाल को प्रमाणित करने के लिये जो प्रलेख प्रस्तुत किये हैं, वे डाक विवरण पुस्तिका के पृष्ठों की फोटोप्रतियां हैं। प्रदर्श–डब्ल्यु 1 से डब्ल्यु –20 तक जो फोटोप्रतियां प्रस्तुत की गई है, वे दिनांक 8.11.2000 से 4.7.2001 तक की है। प्रार्थी ने सेवासमाप्ति की कथित तिथि 12.2.2003 के पूर्ववर्ती एक वर्ष की अवधि में अर्थात 12.2.2002 से 12.2.2003 की अवधि में सेवारत होने का कोई प्रमाण डाक विवरण पुस्तिका के रूप में भी प्रस्तुत नहीं किया है। अपने प्रतिपरीक्षण में प्रार्थी ने यह स्वीकार किया है कि प्रदर्श–एम 2 से प्रदर्श–एम 12 तक डाक विवरण पुस्तिका के पृष्ठों पर उसके हस्ताक्षर नहीं है। प्रदर्श–एम 2 दिनांक 7.8.2002 से प्रविष्टियों को दर्शाता है तथा प्रदर्श–एम 12, दिनांक 12.2.2003 तक की प्रविष्टियों पर समाप्त होता है। इस प्रकार प्रार्थी ने जो प्रलेख विपक्षी से प्रस्तुत करवाये, उनके अनुसार भी 12.2.2003 से पूर्ववर्ती एक वर्ष की अवधि में प्रार्थी का विपक्षी के अधीन किसी भी प्रकार से सेवारत होना प्रमाणित नहीं होता है। प्रार्थी ने विपक्षी द्वारा उसे किये गये कथित भुगतान का कोई प्रमाण प्रस्तुत नहीं किया है। इस स्थिति में विपक्षी साक्षी श्री चेतन कुमार गर्ग द्वारा किया गया यह कथन कि बैंक में डाक का काम, बैंक के कर्मचारियों द्वारा नहीं किया जाता वरन् कोरियर एजेन्सी के द्वारा करवाया जाता था, तथा बैंक की पियोन बुक में गोपाल लाल कुमावत नाम की जितनी प्रविष्टियाँ की गई है, वे प्रविष्टियें किसी कोरियर कर्मचारी की होंगी, सत्य के कहीं निकट प्रमाणित होता है। साक्षी ने प्रतिपरीक्षा में इस सुझाव को दृढ़ता से अस्वीकार किया है कि दिनांक 10.11.96 से 12.2.2003 तक डाक वितरण तथा अन्य चतुर्थ श्रेणी कर्मचारी का कार्य गोपाल लाल कुमावत द्वारा किया जाता हो, क्योंकि डाक वितरण का कार्य कोरियर कम्पनी के माध्यम से किया जाता था। साक्ष्य एवं विधि के विवेचन के उपरान्त यह स्पष्ट है कि प्रार्थी द्वारा दिनांक 10.11.96 को चतुर्थ श्रेणी कर्मचारी के रूप में विपक्षी के अधीन नियुक्ति का तथ्य तथा दिनांक 12.2.2003 के पूर्ववर्ती एक केलेण्डर वर्ष में 240 दिन से अधिक सेवारत रहने का तथ्य प्रार्थी ने अपने विश्वसनीय साक्ष्य से प्रमाणित नहीं किया है। इस प्रकार प्रार्थी उस पर आरोपित सिद्धि भार के उन्मोचन में विफल रहा है।

13. अधिनियम की धारा 25 (एफ) के प्रावधानों का संरक्षण जो कि सेवासमाप्ति के पूर्व एक माह के नोटिस तथा नोटिस न दिये जाने की दशा में एक माह के वेतन के बराबर नोटिस वेतन तथा प्रतिकर से सम्बन्धित है, प्रार्थी को तभी दिया जा सकता है, जब अधिनियम की धारा 25 (बी) के अनुसार वह 240 दिन से अधिक सेवासमाप्ति के तुरंत पूर्व एक वर्ष की अवधि में सेवारत होना प्रमाणित करें। इस प्रकार न तो विपक्षी द्वारा प्रार्थी की सेवासमाप्ति किया जाना ही प्रमाणित हुआ है और न हीं विपक्षी द्वारा अधिनियम की धारा 25 (एफ) के प्रावधानों का उल्लंघन किया जाना प्रमाणित हुआ है। अतः यह बिन्दु प्रार्थी के विरूद्ध निर्णीत किया जाता है।

14. **विवाद्यक बिन्दु संख्या–2** :– इस बिन्दु के अन्तर्गत यह विचारणीय है कि क्या विपक्षी बैंक ने प्रार्थी की सेवासमाप्ति के उपरान्त नवीन नियुक्तियां कर अधिनियम की धारा 25 (एच) का उल्लंघन किया ?

इस सम्बन्ध में प्रार्थी गोपाल लाल कुमावत ने अपने शपथ–पत्र में कोई कथन ही नहीं किया है कि उसको सेवा से पृथक करने के पश्चात किन–किन व्यक्तियों को विपक्षी द्वारा सेवा में नियुक्त किया गया। प्रार्थी की सेवासमाप्ति कथित रूप से दिनांक 12.2.2003 को की गई जबकि प्रार्थी ने अपनी प्रतिपरीक्षा में यह कहा है कि फरवरी 2003 में उसके अलावा और कोई दैनिक वेतनभोगी नहीं था। इस प्रकार प्रार्थी साक्ष्य के अभाव में यह प्रमाणित नहीं कर पाया है कि दिनांक 12.2.2003 के उपरान्त विपक्षी बैंक ने किन्हीं अन्य व्यक्तियों को नवीन रूप से सेवा में नियोजित किया है। इसलिये विपक्षी द्वारा अधिनियम की धारा 25 (एच) का उल्लंघन किया जाना प्रमाणित नहीं हुआ है। इस प्रकार यह विवाद्य बिन्दु प्रार्थी के विरूद्ध निर्णित किया जाता है।

15. **विवाद्यक बिन्दु संख्या–3 अनुतोष** :–विवाद्यक बिन्दु संख्या– 1 व 2 का निर्णय प्रार्थी के विरूद्ध किया गया है तथा यह प्रमाणित नहीं हुआ है कि प्रार्थी ने दिनांक 10.11.96 से 12.2.2003 की अवधी में 240 दिन से अधिक सेवा एक केलेण्डर वर्ष में विपक्षी के अधीन की हो तथा विपक्षी द्वारा प्रार्थी को अधिनियम की धारा 25 (एफ) के प्रावधानों के विपरीत सेवामुक्त किया गया हो। इसलिये प्रार्थी विपक्षी से कोई अनुतोष प्राप्त करने का अधिकारी प्रमाणित नहीं होता है।

16. केन्द्रीय श्रम मन्त्रालय द्वारा न्यायनिर्णयन हेतु प्रेषित रेफरेन्स का उत्तर उपर्युक्तानुसार दिया जाता है।

17. अधिनिर्णय की प्रतिलिपि केन्द्रीय सरकार को औद्योगिक विवाद अधिनियम 1947 की धारा 17 (1) के अन्तर्गत प्रकाशनार्थ प्रेषित की जावे।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 24 जनवरी, 2020

का.आ. 123.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 55/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.01.2020 को प्राप्त हुआ था।

[सं. एल-12012/104/2010-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 24th January, 2020

S.O. 123.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 55/2011) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 24.01.2020.

[No. L-12012/104/2010-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/55/2011

Present: P. K. Srivastava, H.J.S..(Retd)

Shri Omi Shankar Prajapati
S/o Sh. Sarvanlal Prajapati,
R/o Rampur Road, Tehsil Sabalgarh
District Morena (M.P) …Workman

Versus

The Branch Manager
State Bank of India
Jhundpura Branch,
Sabalgarh, Morena
Bhopal (M.P.) …Management

AWARD

(Passed on this 10th day of December, 2019)

1. As per letter dated 27/5/2011 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D.Act, 1947 as per Notification No. L-12012/104/2010(IR(B-I)). The dispute under reference relates to:

> "***Whether the action of the management of State Bank of India in terminating the service of Shri Omi Shankar Prajapati w.e.f. 1-9-2004 is legal and justified? To what relief , the workman is entitled to ?***"

2. After registering the case on the basis of reference, notices were sent to the parties.

3. The case of the workman as stated in his statement of claim is that he has been working in Jhundpura Branch of respondent/Bank since 1981 to 1995 discharging different works allotted to him by respondent/bank, details mentioned in paragraph-1 of the claim. He has been doing his job diligently and there were no complaints against him. He used to work as waterman., daily wager engaged as messenger though he was shown to be working as a canteen man by the respondent/bank and was paid as a canteen man by the bank. He never worked in canteen, rather the respondent/bank had engaged him in work of messenger, cleaning, maintenance of ledger register and law books, counting of cash, bundling of wrong notes and providing water

to bank personnel. In the light of settlement between the union and Management in which daily wagers were to be provided permanent appointment in subordinate cadre. The applicant /workman had also applied for absorption on 25-3-1997. He was called for interview on 27-3-1997 in which he did appear. The Branch Manager had made a recommendation vide his letter dated 5-5-1997 for his appointment as waterman to the Assistant General Manager and his bio-data was sent vide letter dated 8-10-1998. It was also alleged that on 21-12-1998 services of temporary/daily wager/consolidate wagers were terminated but the workman was continued in engagement. He met with an accident while performing duties of management/bank on 1-9-2004 resulting into permanent dis-ablement and when he came back after recovering, he was removed by the branch manager and was not allowed to join. He was not paid any notice or compensation. He raised dispute before the Labour Commissioner after failure of conciliation. The appropriate government referred the dispute to this Court for adjudication. According to the workman, his termination is violative of Section 25(B), 25(F) and 25(D) and Section 5(A) of the I.D.Act and Rule 77 and 78 of Industrial Disputes Central Rules 1947, hence is against law. The workman has prayed for reinstatement with back wages and all consequential benefits setting aside his termination.

4. In its written statement of defence, the respondent/Bank has pleaded that the appellant/workman was engaged as a daily labour for some period at Jhundpura Branch of the respondent/ bank in District Sabalgarh. He worked for 8 days from 12-6-1981 to19-6-1981 for 64 days from February-1991 to April-1991 and for 730 days from August,1993 to July-1995. He was not engaged by the Bank after July 1995 and even during the aforesaid engagement for the aforesaid period as daily wager he was never appointed on any post undergoing recruitment process, hence he does not have right to continue in service of bank. He never completed 240 days in continuous engagement of respondent/bank at any point of time. Also it was pleaded that the Local Implementation Committee of the staff was constituted for welfare of staff members which runs canteen and catering for its members working in the Branch, over which the management of the bank has no control. The canteen staff is engaged by Local Implementation Committee and canteen boys are paid by the Committee. The applicant was also engaged by Local Implementation Committee of the Branch as canteen boy for the period 1-8-1995 to 1-9-2004 hence during this period he was not in employment of the bank in any capacity. Thus there was no occasion of his dis-engagement as stated by him in fact he might have been dis-engaged by the Local Implementation Committee which runs the canteen of the staff. The Management further denied the allegation in his statement of claim and requested that the reference be answered against the workman.

5. At the stage of the evidence the workman has examined himself and has proved four letter issued vide Branch Officers during the period 1994 to 1997 as Exhibit W-5 to W-10, the photocopy of his bio-data is Exhibit W-11. Two letter dated 5-5-1997 and 10-8-1998 is Exhibit W-12 and W-13. The letter dated 27-3-2004 issued by the Assistant General Manager of the Branch is Exhibit W-14, application sent by the workman dated 6-9-2005 is Exhibit W-15, letter issued by Bank Officer dated 5-7-1997 is Exhibit W-16 and letter dated 1-8-1995 Exhibit W-17. The photocopy of particulars of temporary employee, calculation of work done from 1981 to 1995. Application dated 13-12-2005 and certificates issued by Assistant General Manager while doing Management work is Exhibits W-1 to W-4 respectively. Copy of FIR regarding accident and police report have also been filed which are certified copy of pay documents Exhibit W-18 and W-29.

6. The Management has examined its witness Lakurnath, Branch Manger. No document has been filed by Management.

7. At the stage of argument, learned counsel Shri Praveen Yadav and Shri Ashish Rohte submitted their arguments on behalf of applicant workman and management separately. Both the sides have filed written arguments which are part of record. I have gone through the written arguments also.

8. After perusal of the material available on record in the light of reply and arguments, the following issue arise in the case which are points for determination and they are :-

1. **‘‘Whether the dis-engagement of the appellant/workman is justified in law or not?”**
2. **‘‘Whether the workman is entitled to any relief?.”**

9. **ISSUE NO.1:-** Before entering into any discussion on merit , the following provisions relevant to the case are required to be reproduced, which are as follows:-

Industrial Dispute Act,1947:-

2[(oo) "retrenchment" means the termination by the employer of the service of a workman for any any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf.

2[25B. Definition of continuous service.- For the purposes of this Chapter,-- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman; (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and (ii) two hundred and forty days, in any other case; (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than- (i) ninety-five days, in the case of a workman employed below ground in a mine; and (ii) one hundred and twenty days, in any other case. Explanation.- For the purpose of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment; (ii) he has been on leave with full wages, earned in the previous year; (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; (iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.] 1

25D. Duty of an employer to maintain muster rolls of workmen.- Notwithstanding that workmen in any industrial establishment have been laidoff, it shall be the duty of every employer to maintain for the purposes of this Chapter a muster-roll, and to provide for the making of entries therein by workmen who may present themselves for work at the establishment at the appointed time during normal working hours.

25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice: 1[***] (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2[for every completed year of continuous service] or any part thereof in excess of six months; and (c) notice in the prescribed manner is served on the appropriate Government 3[or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]

25G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

Industrial Dispute Central Rules-1957

76-Notice of retrenchment.—If any employer desires to retrench any workman employed in his industrial establishment who has been in continuous service 1 Subs. by S.O. 2485, dated 20th May, 1985. 2 Subs. by S.O. 2485, dated 20th May, 1985. 3 Subs. by G.S.R. 289, dated 2nd March, 1982 (w.e.f. 13-3-1982). 4 Subs. by S.O. 2485, dated 20th May, 1985. The Industrial Disputes (Central) Rules, 1957 for not less than one year under him (hereinafter referred to as 'workman' in this rule and in rules 77 and 78), he shall give notice of such retrenchment as in Form P to the Central Government, the Regional Labour Commissioner (Central) and Assistant Labour Commissioner (Central) and the Employment Exchange concerned and such notice shall be served on that Government, the Regional Labour Commissioner (Central), the Assistant Labour Commissioner (Central), and the Employment Exchange concerned by registered post in the following manner:— (a) where notice is given to the workman, notice of retrenchment shall be sent within three days from the date on which notice is given to the workman; (b) where no notice is given to the workman and he is paid one month's wages in lieu thereof, notice of retrenchment shall be sent within three days from the date on which such wages are paid; and (c) where retrenchment is carried out under an agreement which specifies a date for the termination of service, notice of retrenchment shall be sent so as to reach the Central Government, the Regional Labour Commissioner (Central), the Assistant Labour Commissioner (Central), and the Employment Exchange concerned, at least one month before such date: Provided that if the date of termination of service agreed upon is within 30 days of the agreement, the notice of retrenchment shall be sent to the Central Government, the Regional Labour Commissioner (Central), the Assistant Commissioner (Central), and the Employment Exchange concerned, within 3 days of the agreement.

10. In the light of above provisions of law what is to be seen in this case is whether firstly the workman was engaged by respondent/bank and secondly whether the workman had completed 240 days of uninterrupted service as mentioned above, in the year preceding the date of his disengagement which is 1-9-2004.

11. According to the workman, he was engaged in doing the job of waterman, messenger, maintenance of register, counting of cash, bundling of currency notes, offering water to bank customers and office staff as daily wager in the said period. This is also his case that though he was named and engaged as canteen boy but no work regarding canteen was ever taken by him by the Management. Whereas the case of Management is that he was employed as canteen boy for serving canteen items to the bank staff by Local Implementation Committee of the bank which is run by the staff members .

12. The workman has stated his pleadings on other point as stated above in his statement of oath. In his cross-examination he has stated that he was paid through vouchers and payment was credited in his account whereas the Management witness has corroborated the case of respondent/bank by stating that he was engaged by Local Implementation Committee to run the staff canteen as canteen boy and bank has nothing to do with his engagement/disengagement. He was not under supervision and employment of bank. No work of bank was taken from him.

13. The documents which the workman has filed relates to the period 1994 to 1995. There is no document corresponding to the period within one year preceding the date of his dis-engagement except one copy of FIR for 1-9-2004 stating that the workman was going somewhere for bank work where he met with an accident, this

date is the date of his disengagement. Hence in absence of documentary evidence regarding payment etc. which could corroborate the case of the workman that he was in fact engaged by Bank and not by Local Implementation Committee of the Bank. Only the self service statement of the workman on oath will not be sufficient to hold the continuous engagement of the workman by the bank for a period of 240 days in the year preceding the date of his dis-engagement. Learned Counsel for workman has referred to case law **Jasmer Singh Vs. State of Haryana and Another(2105)4 SCC 458** where it has been laid down that the work done in different sub-divisions will be computed for calculation of 240 days. The facts of the case in hand are different than the case law as mentioned above. It is the case of the workman that though he was engaged as a canteen boy for name sake he used to do the bank jobs as mentioned earlier. This is also to be mentioned here that the burden to prove that the workman was in continuous engagement in 240 days in the year preceding the date of his disengagement lies on the workman which he has failed to discharge in the present case.

14. On the basis of the above discussion the case of the workman that he was engaged by bank and he was in continuous engagement of Management/Bank for a period of 240 days in the year preceding the date of his dis-engagement is held not proved. Accordingly, his dis-engagement is held justified in law and fact. **Issue No.1 is answered accordingly.**

15. **ISSUE NO. 2:-** On the basis of the findings recorded in Issue No.1, the workman is held entitled to no relief.

16. Accordingly, there is nothing on record to hold that the dis-engagement, if any, of the workman is violative of law. The workman is held entitled to no relief.

17. In the result, award is passed as under:-

A. The action of the management of State Bank of India in terminating the Service of Shri Omi Shankar Prajapati w.e.f. 1-9-2004 is held legal and justified.

B. The workman is held entitled to no relief.

P. K. SRIVASTAVA, Presiding Officer

DATE: 10.12.2019

नई दिल्ली, 28 जनवरी, 2020

का.आ. 124.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स डब्ल्यू.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 22/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.01.2020 को प्राप्त हुआ था।

[सं. एल-22012/48/2016-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 28th January, 2020

S.O. 124.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 22/2016*)* of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of M/s. W.C.L and their workmen, received by the Central Government on 24.01.2020.

[No. L-22012/48/2016-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE SHRI S.S.GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/22/2016-17

Date: 17.12.2019

Party No. 1 The Colliery Manager,
Western Coalfields Limited,
Saoner Mine No. 3 Po/Tq Saoner,
Distt. Nagpur (MS)
Nagpur-440001

V/s

Party No. 2:(a) The General Secretary,
Lalzanda Coal Mines Mazdoor Union, Umrer Area
WCL PO/Tq Umrer
Distt. Nagpur
Nagpur-440001

Party No. 2:(b) Shri Manohar Govindrao Wankhede
Ex. Employee Saoner Mine No. 3
Shivajee Chowk Patansaongi,
Tah. Saoner Nagpur(MS)
Nagpur-441113

AWARD

(**Dated:** 17th December, 2019)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the Management of Western Coalfields Limited and their workman, Shri Manohar G. Wandhede through the union, Lalzanda Coal Mines Mazdoor Union, for adjudication, as per letter **No. L-22012/48/2016 – IR (CM-II) dated 15.09.2016,** with the following schedule:-

> **"Whether the action of Superintendent of Mines/Manager of Saoner Mine No. 3 of Western Coalfields Limited in superannuating the services w.e.f. 01.08.2011 instead of 01/08/2015 of the workman namely Sh. Manohar Govinda. Loader Time rated of Saoner Mine No. 3 by office order bearing No. 358 dated 31.07.2011 in not considering the actual date of birth i.e., 01.07.1955 as recorded in form 'B' register initially maintained by the Patansaongi mines of the WCL and also mentioned the same date of birth in office order No. 202 dated 24.03.2001 of the Superintendent of the Mines/Manager, Saoner Mine No. 3 of WCL is legal, proper and justified? If not what relief the workman is entitled?"**

1. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement. In response to which, the workman Shri Manohar Govindrao Wankhede ("The workman" in short) through his union, "Lalzanda Coal Mines Mazdoor Union, Umrer", ("The union" in short) filed the statement of claim and the management of WCL, ("Party No.1" in short) filed the written statement.

2. On behalf of the workman, they filed statement of claim by asserting the following facts:--

i) That the workman was appointed by Party No. 1 in the post of General Mazdoor on 15.02.1980 and later on he was regularized as a Peace Rated Worker (Loader) w.e.f. 12.05.1981.

ii) ''That in the Form "B" maintained under Rules 48, 51, 77 and 77(a) of the Mines Act and Mines Rules, workman's date of birth were recorded as 01.07.1955. He also asserted that, he is going to be superannuated from the company with effect from 01.08.2011 on completion of 60 years of service. The workman is however, given to understand that Party No. 1 was maintaining a service sheet wherein, his date of birth is mentioned as 01.07.1950.''

iii) That "the workman was constrained to approach the Hon'ble High Court for quashing the said order of superannuation from service. The Hon'ble High Court, by an order dated 11.04.2012, has been pleased to dispose of the petition granting liberty to the workman to take such other steps as are available in law."

iv) That the Joint Bipartite Committee for Coal Industries has issued Implementation Instruction No. 76, as an offshoot of National Coal Wage Agreement. This I.I. No. 76 provides detailed procedure for determination/verification of age of the employees and steps for resolution of disputed cases of Service records. He also asserted that, the said procedure also requires that, in case of glaring mistake in reporting of the date of birth, the Age Determination Committee should refer the employee to Apex Medical Board. So according to him, Party No. 1 has failed to comply with this mandatory procedure.

v) That "the workman never gave a declaration or never represented that his date of birth is 01.07.1950. It is also not supported by any documentary or other valid evidence" and prayed that, "This Hon'ble Tribunal be pleased to answer the reference in favour of the workman and direct the Party No. 1 to record the workman's date of birth as 01.07.1955 and declare that, he is deemed to have continued in service till the age of superannuation of 60 years i.e. till 01.07.2015 along with all consequential reliefs."

3. On behalf the management i.e. Party No. 1, they filed written statement by asserting the following facts:--

i) That, the present dispute raised by the Party No. 2 is not an Industrial dispute as per the I.D. Act 1947. According to them, this Tribunal has no jurisdiction to entertain the present case and present case is liable to be rejected.

ii) That, the present dispute is a civil in nature because workman i.e. Party no. 2, claiming a declaration about his date of birth. That the declaration is the specific jurisdiction of civil court and hence reference is liable to be answered in negative.

iii) That, the present case of the Party no. 2 is false, frivolous and without merit and the Party no. 2 has tried to mislead this tribunal and not approaching before this tribunal with clean hands, so reference is liable to be answered in negative.

iv) That the Party no.2 has raised the dispute regarding his date of birth after his superannuation/retirement on 31.07.11.

v) The Party No. 1 admitted the content of para Nos. 1 & 3 and para Nos. 2, 4 and 5 in part of the statement of claim. They admitted that, Party no. 2 was appointed as a General Mazdoor on 15.02.1980 and regularized as a Piece Rated Worker (Loader) w.e.f. 12.05.1981. It is also admitted that, he is going to be superannuated from the company w.e.f. 01.08.2011. It is also admitted that, he filed a W.P.No.1600/2012 before the Hon'ble Bombay High Court at Nagpur bench. Rest of the statement of claim is denied by the Party no. 1 in their written statement.

In this way Party No. 1 prayed that "Whole prayer clause is completely and specifically denied" and also prayed that "This reference is liable to be answered in the negative."

4. **Point of Determination**

i) Whether the actual date of birth of the workman/Party No. 2 is 01.07.1955?

ii) Whether he is wrongly superannuated from the service w.e.f. 01.08.2011?

iii) Whether he is entitled to reinstate with full back wages?

iv) Whether he is entitled to any other relief?

Reasons for Decisions

5. On behalf of the Party No. 2, he filed written notes of argument asserting the following submission:--

That, "Implementation Instruction No. 76 as an off-shoot of National Coal Wage Agreement. This I.I. No. 76 provides detailed procedure for determination/verification of age of the employees and steps for resolution of disputed cases of Service records." And also argued that, "Non-compliance of the instructions by the management in the matter of determination of age of the workman has caused great hardship to the workman" and also prayed that, Tribunal direct "The Party No. 1 to declare the workman, is deemed to have continued in service till he attain the age of superannuation on 01.08.2015 and grant him all consequential benefits of back wages, continuity of service etc."

6. On behalf of the Party No. 1, they filed written notes of argument asserting the following submission:--

i) That, "Dispute raised by the workman is not an Industrial Dispute as per the I.D. Act 1947." and according to them, "This Hon'ble court has no jurisdiction to entertain the present case and the present case is liable to be rejected."

ii) That, "The declaration is the specific jurisdiction of Civil Court and hence the statement of claim filed by the workman, is liable to be rejected with heavy cost." and also argued that, The Party No. 2/ workman, "had tried to mislead this Hon'ble tribunal and not approaching before this Hon'ble tribunal with clean hands and on this count itself, the present case is liable to be rejected."

iii) That Party No. 2 after his superannuation/retirement on 31.07.11 has for the first time raised the dispute regarding his date of birth. So according to the Party No. 1, "He himself is responsible for delay in filing of statement of claim, therefore on the count of delay and latches also, the present case is liable to be rejected."

7. On behalf of the workman/Party No. 2, he examined himself i.e. PW-1, Manohar Govindrao Wankhede, but nobody was examined on behalf of the management/ Party No. 1. Now I want to see the evidence with factual matrix with reference to argument.

PW-1, Manohar in his chief examination supported the statement of claim, but in his cross-examination, he admitted some facts. In para 12 of his cross-examination, he admitted that, "It is true to say that, I was appointed as General Mazdoor with WCL on 15.02.1980." "It is true to say that, I was regularized as a Piece Rated worker w.e.f. 12.05.1981." It is true to say that, while my initial appointment on 15.02.1980, I had not submitted any document related to my date of birth to WCL. It is true to say that, I have been superannuated from services w.e.f. 01.08.2011. It is true to say that, WCL has paid me all the retiremental benefits after my superannuation. "It is true to say that, during the period of my service, I had made only one representation to WCL regarding my date of birth. I have not filed any document/representation, which was made by me to WCL in regard to date of birth before this Hon'ble Court."

8. On going the above statement of Shri Manohar, I observed that, he has not filed any document regarding date of birth at the time of initial appointment, representation at the time of evidence. It is also observed that, in "Form B" register, his date of birth is mentioned as 01.07.1955, but in service record his date of birth is 01.07.1950. All these documents carry the thumb impression. i.e. it shows that in service record, he is illiterate, but in the Court proceedings, he signed all related documents. Nobody challenge that, these thumb impressions were not of workman. It also shows that, documents exhibit W-III and W-IV are contradicting in each other regarding the date of birth of the workman, which are not supported by any reliable evidence. I relied on case laws, Secretary & Commissioner, Home Vs R/ Kirubakaran AIR 1993 SC 2647 and Union of India Vs Harman Singh AIR 1993 1367, in which, following principles are laid down:-

i) "Normally, in most of the services, the date of birth is recorded in the service records on the eve of the appointment with reference to the date of birth mentioned if the Matriculation Certificate, Higher Secondary Education Board Certificate or any other certificate of similar nature produced by the applicant concerned at the time of making application for his appointment. As such whenever an application for alteration of the date of birth is made on the eve of superannuation or near about that time, the Court or the Tribunal concerned should be more cautions because of the growing tendency amongst a section of public servants, to raise such a dispute, without explaining as to why this question was not raised earlier".

ii) "The respondent had the occasion to see his service book on numerous occasions. He signed the service book at different places at different points of time. Never did he object to the recorded entry. The same date of birth was also reflected in the seniority lists of LDC and UDC, which the respondent had admittedly seen, as there is nothing on the record to show that he had no occasion to see the same. He remained silent and did not seek the alteration of the date of birth till September 1991, just a few months prior to the date of his superannuation. Inordinate and unexplained delay or laches on the part of the respondent to seek the necessary correction would in any case have justified the refusal of relief to him".

9. Ongoing the above discussions and principles laid down in the above case laws, it appears that, the workman did not file any document regarding his age at the time of joining his service and in Court proceeding. He did not apply to the Age Determination Committee before 31.07.2011. It also shows that, he applied before the Party No. 1 at the verge of retirement without any age proof. So, this Tribunal is helpless. In my humble opinion, he is not entitled to any benefit regarding his retirement age. He is also not entitled to any extra service benefit, which he claimed. Hence, it is ordered:-

ORDER

The action of Superintendent of Mines/Manager of Saoner Mine No. 3 of Western Coalfields Limited in superannuating the services w.e.f. 01.08.2011 instead of 01/08/2015 of the workman namely Sh. Manohar Govinda. Loader Time rated of Saoner Mine No. 3 by office order bearing No. 358 dated 31.07.2011 in not considering the actual date of birth i.e., 01.07.1955 as recorded in form 'B' register initially maintained by the Patansaongi mines of the WCL and also mentioned the same date of birth in office order No. 202 dated 24.03.2001 of the Superintendent of the Mines/Manager, Saoner Mine No. 3 of WCL is legal, proper and justified. He is not entitled to any relief.

S. S. GARG, Presiding Officer

नई दिल्ली, 28 जनवरी, 2020

का.आ. 125.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स डब्ल्यू.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 41/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.01.2020 को प्राप्त हुआ था।

[सं. एल-22012/123/2017-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 28th January, 2020

S.O. 125.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 41/2018*)* of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of M/s W.C.L and their workmen, received by the Central Government on 24.01.2020.

[No. L-22012/123/2017-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE SHRI S.S.GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/41/2018-19

Date: 02.12.2019

Party No. 1(a) The Chairman-cum-Managing Director
Western Coalfields Ltd.,
Coal Estate, Civil Lines,
Nagpur-440001

Party No. 1(b) The Sub Area Manager, WCL
Saoner Sub Area, Post & Tah. Saoner,
Nagpur-441107

V/s

Party No. 2:(a) Sh. Shyamrao S/o Narayan Madase,
R/o Qtr. No. 98/4, Bajaj Colony, At Post:
Adasa, Tah. Saoner, Distt
Nagpur-441107

Party No. 2:(b) The President,
Koyla Shramik Sabha (HMS),
Br. Sillewara, Tah. Saoner,
Distt
Nagpur-441107

AWARD

(**Dated:** 02th December, 2019)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the

industrial dispute between the employers, in relation to the Management of Western Coalfields Limited and their workman, Shri Shyamrao S/o Narayan Madase, for adjudication, as per letter **No.L-22012/123/2017–IR (CM-II) dated 29.10.2018,** with the following schedule:-

> **"Whether the action of the management of Western Coalfields Ltd., Nagpur and Western Coalfields Ltd., Saoner Sub Area in denying the change of date of birth in respect of Shri Shyamrao S/o Narayan Madase is just fair and legal? It not, to what relief the workman is entitled to?"**

1. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement. In response to which Koyla Shramik Sabha(HMS) Union, Saoner ("Party No. 2" in short) did not appear and did not file statement of claim. The management ("Party No. 1" in short) did not also file their Written Statement. But on behalf of Party No. 1 Advocate Shri Ramesh Darda, Tushar Darda, K.E. Meshram advocates filed their Vakalatnama on 11.02.2019.

2. On perusal of the record, it appears that, alongwith the Party No. 1/management; notices were also issued separately to the union/Party No. 2 as well as to the workman. Notice sent to the Party No. 2/union was received and the acknowledgement to the same has been received by this Court, but notice sent to the workman was returned with remark, "The said man is not residing at this address". Advocate for the Party No. 1 filed an application for passing "No Dispute Award", which is marked as I.A. No. I. In my humble opinion, the union/Party No. 2 by knowing, did not appear or contest the case. So, application I.A. No. I is allowed. Hence, it is ordered:-

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

S.S. GARG, Presiding Officer

नई दिल्ली, 28 जनवरी, 2020

का.आ. 126.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स फूड कारपोरेशन ऑफ़ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, बंगलौर के पंचाट (संदर्भ संख्या सीआर 25/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27.01.2020 को प्राप्त हुआ था।

[सं. एल-22012/204/2001-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 28th January, 2020

S.O. 126.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CR 25/2003) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, BANGALORE as shown in the Annexure, in the industrial dispute between the management of M/s. Food Corporation of India and their workmen, received by the Central Government on 27.01.2020.

[No. L-22012/204/2001-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 17TH JANUARY 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 25/2003

I Party	**II Party**
The Secretary, FCI Loading and Unloading Workers Union, No. 28, Raja Snow Building, S.C. Road, Seshadripuram, Bangalore – 560020.	The Senior Regional Manager, Food Corporation of India, Regional Office, No-10, Pallavi Complex, Kalinga Rao, Bangalore – 560027.

Appearance

Advocate for I Party : Mr. K. T. Govinde Gowda

Advocate for II Party : Mr. B. L. Sanjeev

AWARD

The Central Government vide Order No. L-22012/204/2001-IR(CM-II) dated 31.03.2003 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether there exists employer and employee relationship between the management of FCI (Food Storage Deports) and the contract workers of Mysore, KGF, Bangarpet, Bellary, Raichur, Shimoga and Bhadravati, Depots as in the case of Whitefield and Krishnarajapuram Depots? If so, whether the workers working in the said depots including the DPS workers of Whitefield & Krishnarajapuram are entitled to Ancillary Labour Wages and other benefits as claimed by the FCI Loading and Unloading Workers Union?"**

Vide order dated 18.02.2005 corrigendum was issued to the above Industrial Dispute as follows:

> **"Whether the demand of FCI Loading and Unloading Workers Union vide its claim dated 25.08.2000 for Ancillary Labour Wages and Additional benefits to the FCI Whitefield Godown Workers, Bangalore and Unkal-Hubli Godown Workers as paid to other FCI Godown workers in Karnataka like Mysore, KGF, Bangarpet, Bellary, Raichur, Shimoga, Bhadravathi, etc., under FCI Circular dated (1) 19.01.1989 (2) 16.03.1989 (3) 17.01.1994 and (4) 27.07.1994 is legal and justified? If so, to what relief the workmen are entitled?"**

1. The claim of the 1st party Union is, the 2nd Party Management employed labourers for discharge of its functions of purchase, storage, movement, transport distribution and sale of food grains and other food stuffs, in the category of, Departmentalized Labourers; Direct paid Labourers; Contractor's Labourers; Labourers employed through Co-operative Society;

During the year 1991, the 2nd Party requested its Godown workers who are the members of the 1st party Union so also members of Karnataka Contract Labour and Transport Co-operative Society Ltd., for executing handling and transportation work. The members are working in Godown at K.R. Puram, Bangalore from 01.09.1991 to 21.02.1994; Whitefield Godown from 01.01.1991 to 12.07.1996; Unkal Hubli Godown from 01.04.1992 to 07.04.1996, by agreeing to extend various additional benefits and the contract was for two years to be extended for further periods. It was agreed to pay wages through the Co-operative Society under Schedule of Rates ASOR; it is the usual custom and usage to increase the tender rate wages once in two years. They also agreed to extend various Statutory and Welfare Wages for weekly off, wages for ancillary Labourers, incentive wages for medical expenses, payment of ex-gratia in lieu of bonus, EPF contribution, reimbursement and payment of Secretarial Staff wages and other benefits as stipulated under the Circulars issued by the 2nd Party dated 19.01.1989, 16.03.1989, 17.01.1994 and 27.07.1994. The Management has showed differentiation to the workers working in the Godowns of Whitefield, Bangalore and Unkal Hubli from other Godowns by extending additional benefits through respective Godowns Co-operative Society to the Godown workers. Initially the 2nd Party vide circular dated 27.07.1994 had imposed certain conditions for extending the additional benefits but those Co-operative Societies have not followed the conditions; entire H&T work is done under Benami transaction in the name of workers Co-operative Society. They are claiming additional benefit for the members who worked at Whitefield Godown from 01.09.1991 to 11.07.1996 and who worked at Unkal Godown Hubli from 01.04.1992 to 07.10.1996 as paid to other Godown workers through their respective Co-operative Society.

The 2nd Party had agreed to pay wages for weekly off under its Circular dated 27.07.1994 which is paid to the other Godown workers by them through their Co-operative Societies; wages for weekly off is mandatory under law. The wages are quantified for the above period at Rs. 1,67,61,000/- with an interest at 11.16%. The Unkal Godown workers are entitled to receive 27% ASOR as wages for weekly off from 27.07.1994 to 07.10.1996 amounting to Rs. 39,69,000/- with interest at 11.16%. Workers at Whitefield are entitled to receive ancillary labour wages per day 5,000 metre tons storage capacity, hence the white filed Godown workers are entitled for Rs. 29,37,600/- along with EPF contribution at the rate of 11.16% and the Hubli workers are entitled for Rs. 11,66,400/- plus EPF contribution at the rate of 11.16% on the said amount. As per the Circular dated 27.07.1994, the Whitefield workers are entitled to receive incentives at the rate of Rs. 0.50 paise for each operation and they are entitled to received Rs. 81,56,414/- with 11.16% EPF contribution; the Unkal Godown works are entitled for Rs. 30,27,692/- with 11.16% EPF Contribution; the Whitefield Godown workers are entitled for ex-gratia payment of Rs. 9,62,000/- and Unkal Godown workers are entitled for Rs. 2,00,000/- at the

statutory minimum rate of 8.33%. They are entitled to receive Employer Share of EPF contribution at Rs. 13,23,806/- and the Unkal Godown workers are entitled for Rs. 2,66,000/-; towards secretarial staff wages the workers of both Godown are entitled to receive Rs. 4,00,000/- each.

2. The 2nd Party in their Counter Statement denied the Claim by stating that, claim is hopelessly vague and bald, bereft of any material particulars; they have extended eligible benefits to those employees who are the member of the 1st Party Union.

It is stated that, H&T operation was awarded to the H&T Co-operative Society both at K.R Puram Godown and Whitefield for the period 27.04.1995 to 29.01.1996 at the same rate as Awarded for the past 2 years but due to difference of opinion among the labourers the work was stopped and the 1st Party which was functioning in the name of Karnataka Contract Labour and Transport Co-operative Society could not carry out day to day operation from 21.02.1994. Hence, the 2nd Party awarded the contract to Handling and Transport Hamalies Co-operative Society from 27.04.1995 to 29.01.1996; the additional benefits mentioned in the circular dated 27.07.1994 and 16.10.1995 has already been taken care. As per the circular dated 27.07.1994 the basic rate shall be not less than Rs. 0.85 per bag and the minimum ASOR at which the contract was Awarded was 183%; the 1st Party was carrying on the work from 1991 and the society which carried out the work from 27.04.1995 have been awarded the contract at the rate of 435% ASOR. Both societies had the knowledge of headquarters circulars at the time of awarding the contract. Even if they have any dispute over this issue, they should have taken up the matter against the concerned contracting society who was the employer of the workers represented by the Union. The contract was entered by mutual consent / agreement. The FCI H&T Hamalies Co-operative Society, is a necessary Party in this Industrial Dispute; the contract labourers are not the employees of the 2nd Party; there is no Employer-Employee relationship. The rate at which the contract was Awarded to Karnataka Contract Labour and Transport Co-operative Society (1st Party) at 435% ASOR was on higher side when compare to the others, H&T contract awarded by the 2nd Party to the workers of other depots. A dispute is raised by the Union about the Provident Fund issue in Writ Petition No. 9185-1986/1998. Regional Office Workers Union is the society that had worked in K.R. Puram and Whitefield from 27.01.1995 to 29.01.1996, it is arrayed as 3rd Respondent in the Writ Petition; the relief sought in the petition was to commence enquiry under Section 7-A of the EPF Act from 1955 onwards; the Writ petition is disposed off on 20.10.2000 directing the Regional Provident Fund Commissioner to proceed with the enquiry in accordance with law and take necessary action. The 1st Party cannot bring the issue before this forum. Their claim for the benefits in par with workers of other Godowns is not maintainable since there is no relationship of employer and employee, it is only a contract for specific period and they have worked directly under the control of the contractors. The DPS was introduced in the depots of Whitefield, KR Puram and Unkal during the year 1996 but the claim of the 1st Party Union is for the period earlier to the introduction of DPS system.

3. Both parties adduced evidence. Written argument is submitted by the 2nd Party.

4. The Secretary of the 1st Party Union was the witness for the 1st Party. He virtually reiterated claim allegations in his examination in chief evidence.

During his cross examination he admits that, prior to 1996, the 2nd Party used to hire labourers through societies; the agreement used to be between the concerned society and the 2nd Party said system was discontinued from 1996 onwards; as per the order of the Government, the loaders and unloaders who had EPF coverage were taken to Direct Payment System and those DPS workers are getting wages as per Government orders (the witness is one among such DPS worker). DPS is introduced by the Government at K.R. Puram, Whitefield, Nanjangud, K.R. Nagar and Hubli Unkal. Presently Nanjangud, Hubli, Unkal and K.R. Nagar Godowns have merged with Whitefield and K.R. Puram units and the workers are transferred to these two units in the year 2018; after 1996, the 2nd Party engaged workers for loading and unloading through contract system. Their claim is for the benefits of the Circular Ex W-1, Ex W-2 and Ex W-5. Contract employees are working in the depots of Bangarpet, Bellary, KGF, Raichur, Shimoga and Bhadravathi.

5. Rebuttal evidence is adduced by the Assistant Manager (CONT) of the 2nd Party, asserting the stand of the 2nd Party. His entire cross examination is denial of the suggestions put to him on behalf of the 1st Party.

Admittedly, the 1st Party is demanding monetary benefits to the Godown workers of Whitefield from July 1994 to July 1996 and for the period July 1994 to October 1996 in respect of workers at Unkal Godown. This monetary benefit is quantified on the basis of the earlier circulars issued by the Government. Admittedly, that was the period where the members of the 1st Party have worked through the intermittent contractor i.e. FCI Handling and Transport Hamalies Co-operative Society and the period of contract was 27.04.1995 to 21.01.1996. The rates were in accordance with the rates awarded for a previous period of 2 years as on 01.01.1993. It is stated that consequent upon the direction issued by the Hon'ble High Court in W.A No. 939/19896 and connected cases the governing board of the 2nd Party took policy decision dated 19.10.1996

withdrew all the concessions to co-operative societies and the Co-operative Society was made to participate in tender enquires in par with Private parties as per usual terms and conditions.

Consequently, fresh Tenders were called for in all the Godowns under the control of the 2nd Party said policy is not interfered by any judicial order. The society through whom the workers were engaged is not made party in this adjudication. The details of the eligible employees for the benefits are not made available. Except the self-serving statement of the General Secretary of the Union no material is placed about the additional benefits enjoyed by the workmen of the other Godowns for the relevant period. The contract since was between the 2nd Party and the Society any relief sought by the workmen in excess to the terms of contract is not justified. No material is brought in to show that the 1st Party workmen had directly worked under the 2nd Party thereby they are the employees of the 2nd Party. The demand as made by the 1st Party cannot be accepted merely for asking the same. Without producing tangible evidence about the benefits granted to the workers of other Godowns and without the details of the concerned 1st Party workmen their demand cannot be endorsed. Hence,

AWARD

The reference is rejected.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 17th January, 2020)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 28 जनवरी, 2020

का.आ. 127.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स भारतीय खाद्य निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में राष्ट्रीय औद्योगिक न्यायाधिकरण कोलकता के पंचाट (संदर्भ संख्या एनटी 01/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.01.2020 को प्राप्त हुआ था।

[सं. एल-22012/439/1995-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 28th January, 2020

S.O. 127.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. NT-01/1999)of the National Industrial Tribunal Kolkata, as shown in the Annexure, in the industrial dispute between the management of M/s Food Corporation of India and their workmen, received by the Central Government on 28.01.2020.

[No. L-22012/439/1995-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

NATIONAL INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. NT-01 of 1999

Parties: Employers in relation to the management of Food Corporation of India

AND

Their workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management	:	Mr. Alok Banerjee, learned counsel withMr. Uttam Kumar Mondal, learned counsel
On behalf of the Workmen	:	Mr. Madhusudan Dutta, Ld. Counsel for for FCI Workers Union.
		Mr. Tridib Chakraborty, Ld. Counsel for for FCI Handling Workers Union.

State: National. Industry: Food & Public Distribution

Dated: 20th January, 2020

AWARD

By Order No.L-22012/439/95-IR(C-II) dated 15.12.1998 and subsequent orders of even number of different dates the Government of India, Ministry of Labour in exercise of its powers under Section 7B read with Section 10(1A) of the industrial Disputes Act, 1947 referred the following dispute to this National Tribunal for adjudication:

"Whether the action of the management in relation to FCI in denying facilities of reimbursement of First Class Rly. Fare towards LTC (Bharat Darshan) for the block year 1990-93 to departmental workers of all FCI FSDs of WestBengal, Bihar, Orissa, Assam and NEF Region who reached the basic pay of Rs.1006.00 per month or above, is justified? If not, to what relief are the workmen entitled?"

2. According to statement of claim the workmen under reference are the departmentalized workers of FCI belonging to East Zone of the corporation. The number of concerned workmen is around 9518 engaged in the depot operations of loading, unloading etc. of the management. A memorandum of settlement was signed on 31st December, 1983 between the FCI management and the union by which facility of LTC (Bharat Darsan) was extended to the concerned workmen on the pattern applicable to the FCI employees with immediate effect. There was no condition in regard to minimum pay limit for availing First Class railway fair to enjoy the benefit of LTC. Hence the concerned workmen enjoyed First Class railway fare for availing LTC for the Block Year 1982 to 1985 and thereafter. Again a memorandum of settlement was signed on 3rd November, 1989 between the management and the union replacing the existing scheme of LTC whereby the facility of LTC was restricted upto a distance of 1500 kilometers each side for the maximum of four adults as it was allowed to the employees of the corporation. The concerned workmen enjoyed the facility of First Class railway fare for the Block Year 1986 – 1989 for LTC upto the date of signing the memorandum of settlement and thereafter upto the middle of April, 1990. However, a circular No. IR(L)/2(1)/87 dated 19th April, 1990 was issued by the FCI directing that only those of the concerned workmen who were enjoying the revised basic pay of Rs.1430/= as on 01.01.1988 would be allowed reimbursement of First Class railway fare in the scheme of LTD for the Block Year 1986 – 1989. The union made representation to the FCI management against this unilateral decision and curtailment of existing benefits. Ultimately in a meeting held on 21st May, 1990 between the management and the union it was agreed that the encashment of LTC for the Block Year 1986 – 1989 would be extended upto 1990 at par with FCI employees viz. for availing First Class fare at any point of pay of Rs.1006/= under the LTC reimbursement scheme, but when the concerned workmen wanted to avail of the facility of LTC/reimbursement of First Class railway fare for the Block Year 1990 – 1993, the management suddenly stopped facility with the instruction that only those of the concerned workmen who had reached Rs.1430/= would be eligible to First Class railway fare which amounted to curtailment of existing benefits enjoyed by the concerned workmen over the years. Aggrieved by the action of the FCI management against the terms and conditions of the existing memorandum of settlement without serving notice in writing of their intention to terminate the settlement in the matter of grant of First Class railway fare in availing LTD for the Block Year 1990 – 1993, the union of concerned workmen raised an industrial dispute before the Deputy Chief Labour Commissioner (Central), Dhanbad. On failure of conciliation proceeding the appropriate Government referred the industrial dispute to the Central Government Industrial Tribunal at Kolkata. During pendency of adjudication it was revealed that the dispute required to be referred for adjudication by the National Industrial Tribunal, the appropriate Government referred the same for adjudication by this National Tribunal as above. It is further pleaded that during pendency of industrial dispute the management of FCI has however, allowed reimbursement of First Class railway fare for the Block Year 1990 to 1993 to the concerned workmen at a pay point of Rs.1006/= to those only who were departmentalized upto 31st December, 1987. In some food storage depots the concerned workmen at a pay point of Rs.1006/= and recruited on or after 01.01.1998 have also been allowed reimbursement of First Class railway fare towards LTC for the year 1990 – 1993. Thus the present industrial dispute was made on denial by the management of FCI the facility or reimbursement of First Class fare towards LTC for the year 1990 – 1993 to those of the concerned

workmen who were recruited on or after 01.01.1988. The facility of First Class railway fare for LTC for the Block Year 1990 – 1993 to the concerned workmen recruited on or after 01.01.1988 cannot be denied without taking recourse to the due process of law.

3. The management of FCI filed its written statement in reply to the averments made in the statement of claim pleading *inter alia* that the departmental labourers of FCI were initially allowed LTC for home town facility with the Second Class railway fare since 24th July, 1984. However, considering their demand the facility of LTC was also extended to them on similar pattern to that of regular employees of the corporation and an agreement to that effect was also signed on 31st December, 1983 between the management and the union. Again on demand of the union to liberalize the class of railway fare from 2nd class to 1st class at par with the employees of the corporation, the facility of First Class railway fare was extended also to departmental workers and a settlement was also entered into on 31st December, 1988 which was valid for a period of five years. Another memorandum of understanding was signed on 3rd November, 1989 between FCI Workers Union and the management of FCI for reimbursement of LTC in a block of four years according to which the departmental labourers were entitled for the benefit as par the pattern applicable to the regular employees of the corporation. After April, 1989 the regular employees of the corporation were entitled to get LTC with First Class railway fare whose gross element reached at the stage of Rs.1653/= or above, should have been entitled to get the benefit of LTC with First Class fare. Since the pay scale of departmental labourers have been revised with effect from 01.01.1988 the departmental labourers who were drawing basic of Rs.1430/= or above would reach the gross element of Rs.1653/= after taking into consideration the variable Dearness Allowance of Rs.226 and not otherwise. However, the departmental workers of Calcutta Complex who were enjoying the LTC with First Class fare in the pre-revised scale were allowed as a special case, to continue to enjoy the said facility of LTC with First Class railway fare irrespective of their basic pay. The FCI management vide circular dated 19th April, 1990 revised the basic pay for the purpose of entitlement of First Class railway fare at Rs.1430/= with effect from 01.01.1988. There is no curtailment of existing facility with regard to LTC. The workers of the Calcutta Complex Depots who had been enjoying the benefit of First Class fare for the purpose of LTC as per the settlement with the union on 31st December, 1983 and who subsequently deprived of the above facility on account of fixation of pay point at Rs.1430/= for the purpose of entitlement of First Class railway fare were allowed to continue with the same benefit irrespective of their pay point in the subsequent revised pay scale as a special case. Hence the question of curtailment of existing facility does not arise at all.

4. In reply to the averments made in the written statement the union filed its rejoinder reiterating its stand made in the statement of claim.

5. On behalf of the union Shri Dulal Chandra Nath has been examined as WW-01 and Shri Jayanta Banerjee on behalf of the management as MW-01.

6. I have heard the learned counsel for the union as well as for the management.

7. The basic question involved in this case is whether the management of FCI could enhance the minimum basic pay for the entitlement of First Class fare for the purpose of LTC for the Block Year 1990 – 1993 from Rs.1006/= to Rs.1430/= ? In other words, whether such enhancement of minimum basic pay as above, amounts to change in condition of service of departmental workers and a notice under Section 9A of the Act of 1947 was required? Relevant portion of Section 9A of the Act of 1947 may be quoted as below –

9A. Notice of change – No employer, who proposes to effect any change in the condition of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change, -

(a) without giving to the workmen likely to be affected by such change a notice din the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty-one days of giving such notice;

Provided that no notice shall be required for effecting any such change –

(a) where the change is effected in pursuance of any settlement or award, or

……

……..

Thus the above provision of Section 9A of the Act of 1947 reveals that where any change in condition of service applicable to any workman in respect of any matter specified in Fourth Schedule is proposed, a notice in writing is required to be given to the concerned workmen. In the present cased it is not disputed between the parties that the benefit of LTC bestowed on the departmental workers by memorandum of settlements is a benefit which is covered under Fourth Schedule of the Act of 1947. Therefore, 21 days notice is required to be given before any change is effected to the benefits available to the workmen concerned. It is also not disputed that the management of FCI never gave any notice to the workmen. It has been submitted on behalf of the management of FCI that a memorandum of settlement was signed between the management and the union whereby the union had agreed that the facility of LTC with First Class railway fair would be payable to the departmentalized workers at par with the regular employees of the corporation. It is also not disputed that the memorandum of settlement was signed between the parties on 31st December, 1983 whereby the facility of LTC with First Class railway fare was extended to the departmentalized workers of East Zone of the corporation on the pattern applicable to the FCI employees for the Block Year 1982 to 1985. By signing another memorandum of settlement of 3rd November, 1989 the facility of LTC was restricted to a distance of 1500 kilometers for a maximum of four adults declared by the departmentalized workers.

8. The management has set up its case by stating that before 01.08.1983 the basic pay of the employees who were drawing Rs.450/= per month were entitled for First Class Railway Fare. This pay point of Rs.450/= was revised to Rs.1006/= in the revised pay scale as on 01.08.1983. It was due for further revision with effect from 01.08.1987. It is further submitted that on revision of basic pay of departmental labourers, it became Rs.1430/= compared to the basic pay of Rs.1006/=. Hence the departmental labourers who were drawing basic pay of Rs.1430/= or above became entitled for LTC with First Class Railway Fare and accordingly a circular dated 19th April, 1990 was issued by the department that the departmental workers drawing basic pay of Rs.1430/= per month may avail reimbursement of LTC with First Class Railway Fare.

9. Though the management has contended that the basic pay of departmental workers became Rs.1430/= as on 01.01.1988 compared to Rs.1006/=, but no document has been filed on behalf of the management to substantiate this point. Contrary to it the management itself has filed a table of pay scale of staff (Class-IV), Ext. M-06 which shows the pay scale as on 01.01.1990. From Ext. M-06 it is evident that the pay scale of handling labourers as on 01.01.1990 was Rs.1075 – 1580 and that of ancillary labourers was Rs.1055 – 1515. It is also mentioned in the document that the above pay scale was the revised pay scale with effect from 01.01.1988 as per memorandum of settlement dated 12th June, 1989. This document also discloses that LTC entitlement with First Class Railway Fare was available at pay point of Rs.1006/= which means that all handling workers drawing more than Rs.1006/= were entitled for LTC with First Class Railway Fare for the block year 1990 – 1993. Obviously the basic pay of handling workers was more than Rs.1006/=. This document was filed by the management itself which belies the case of the management. The learned counsel for the management could not explain as to how the basic pay of handling workers/departmental workers was Rs.1430 as on 01.01.1988 which is mentioned in the circular dated 19th April, 1990.

10. From the circular dated 19.04.1990 it is also disclosed that after revision of pay of staff as on 01.08.1983 the pay of staff became Rs.1006/= compared to Rs.450/=, but in Calcutta Complex there was no pay

point of Rs.1006/= in any pay scale of any category of departmental labourers. The maximum pay point was Rs.963/=. Hence as a special case, FCI permitted the departmental workers of Calcutta Complex to enjoy the benefit of LTC with First Class Fare despite not reaching the basic pay of Rs.1006/= which also appears to be discriminatory and arbitrary. It is beyond comprehension why employees of same category were given different treatment.

11. The settlement dated 21st May, 1990, Ext. W-05 between the Zonal Office of the management and the union also substantiates the case of the departmental workers wherein facility of LTC with First Class Fare for the block year 1986 – 1989 was extended upto 1990 at pay point of Rs.1006/=. Circular No. 20 of 11.08.1989 also shows that the employees drawing basic pay of Rs.1006/= were entitled for reimbursement of LTC with First Class Railway Fare in the year 1989.

12. In view of above, the circular issued by the management of FCI on 19th April, 1990 enhancing the minimum level of pay to Rs.1430/= for entitlement of LTC (Bharat Darshan) is certainly violative of provisions of Section 9A of the Act of 1947. Hence this action of the management of FCI is not sustainable. Hence the reference is answered in affirmative in favour of the departmental workers.

13. Award is passed accordingly.

Justice RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,
The 20th Jaunary, 2020

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